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Private Pensions: Timely Action Needed to Address Impending Multiemployer Plan Insolvencies

Abstract

Multiemployer pension plans—created by collective bargaining agreements including more than one employer—cover more than 10 million workers and retirees, and are insured by the PBGC. In recent years, as a result of investment market declines, employers withdrawing from plans, and demographic challenges, many multiemployer plans have had large funding shortfalls and face an uncertain future.

GAO examined (1) actions that multiemployer plans in the weakest financial condition have taken to improve their funding levels; (2) the extent to which plans have relied on PBGC assistance since 2009, and the financial condition of PBGC's multiemployer plan insurance program; and (3) options available to address PBGC's impending funding crisis and enhance the multiemployer insurance program's future financial stability.

GAO analyzed government and industry data and interviewed government officials, pension experts—including academics, actuaries, and attorneys, multiemployer plans' trustees and administrators, employers and trade associations, unions, advocacy organizations, and other relevant stakeholders.

Keywords

pensions, insolvency, multiemployer pension plans, shortfalls

Comments

Suggested Citation

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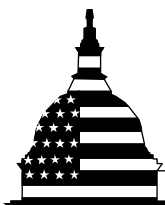
GAO

Report to the Chairman, Committee on
Education and the Workforce, House of
Representatives

March 2013

PRIVATE PENSIONS

Timely Action Needed to Address Impending Multiemployer Plan Insolvencies



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Highlights of [GAO-13-240](#), a report to
Chairman, Committee on Education and the
Workforce, U.S. House of Representatives

Why GAO Did This Study

Multiemployer pension plans—created by collective bargaining agreements including more than one employer—cover more than 10 million workers and retirees, and are insured by the PBGC. In recent years, as a result of investment market declines, employers withdrawing from plans, and demographic challenges, many multiemployer plans have had large funding shortfalls and face an uncertain future.

GAO examined (1) actions that multiemployer plans in the weakest financial condition have taken to improve their funding levels; (2) the extent to which plans have relied on PBGC assistance since 2009, and the financial condition of PBGC's multiemployer plan insurance program; and (3) options available to address PBGC's impending funding crisis and enhance the multiemployer insurance program's future financial stability.

GAO analyzed government and industry data and interviewed government officials, pension experts—including academics, actuaries, and attorneys, multiemployer plans' trustees and administrators, employers and trade associations, unions, advocacy organizations, and other relevant stakeholders.

What GAO Recommends

Congress should consider comprehensive and balanced structural reforms to reinforce and stabilize the multiemployer system. PBGC generally agreed with our findings and analysis.

View [GAO-13-240](#). For more information, contact Charles Jeszeck at (202) 512-7215 or jeszeckc@gao.gov

March 2013

PRIVATE PENSIONS

Timely Action Needed to Address Impending Multiemployer Plan Insolvencies

What GAO Found

The most severely distressed multiemployer plans have taken significant steps to address their funding problems and, while most plans expected improved financial health, some did not. A survey conducted by a large actuarial and consulting firm serving multiemployer plans suggests that the large majority of the most severely underfunded plans—those designated as being in critical status—either have increased or will increase employer contributions or reduce participant benefits. In some cases, these measures will have significant effects on employers and participants. For example, several plan representatives stated that contribution increases had damaged some firms' competitive position in the industry, and, in some cases, threatened the viability of such firms. Similarly, reductions in certain benefits—such as early retirement subsidies—may create hardships for some older workers, such as those with physically demanding jobs. Most of the 107 surveyed plans expected to emerge from critical status, but about 25 percent did not and instead seek to delay eventual insolvency.

The Pension Benefit Guaranty Corporation's (PBGC) financial assistance to multiemployer plans continues to increase, and plan insolvencies threaten PBGC's multiemployer insurance fund's ability to pay pension guarantees for retirees. Since 2009, PBGC's financial assistance to multiemployer plans has increased significantly, primarily due to a growing number of plan insolvencies. PBGC estimated that the insurance fund would be exhausted in about 2 to 3 years if projected insolvencies of either of two large plans occur in the next 10 to 20 years. More broadly, by 2017, PBGC expects the number of insolvencies to more than double, further stressing the insurance fund. PBGC officials said that financial assistance to plans that are insolvent or are likely to become insolvent in the next 10 years would likely exhaust the insurance fund within the next 10 to 15 years. If the insurance fund is exhausted, many retirees will see their benefits reduced to an extremely small fraction of their original value because only a reduced stream of insurance premium payments will be available to pay benefits.

Experts and stakeholders cited two policy options to avoid the insolvencies of severely underfunded plans and the PBGC multiemployer insurance fund, as well as other options for longer term reform. Experts and stakeholders said that, in limited circumstances, trustees should be allowed to reduce accrued benefits for plans headed toward insolvency. Also, some experts noted that, in their view, the large size of these reductions for some severely underfunded plans may warrant federal financial assistance to mitigate the impact on participants. Experts and stakeholders also noted tradeoffs, however. For example, reducing accrued benefits could impose significant hardships on some retirees, and any possible financial assistance must be considered in light of the existing federal debt. Options to improve long term financial stability include changes to withdrawal liability—payments assessed to an employer upon leaving the plan based on their share of unfunded vested benefits—to increase the amount of assets plans can recover or to encourage employers to remain in or join the plan. In addition, experts and stakeholders said an alternative plan design that permits adjustments in benefits tied to key factors, such as the funded status of the plan, would provide financial stability and lessen the risk to employers. These and other options also have important tradeoffs, however.

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Abbreviations

DB	defined benefit
ERISA	Employee Retirement Income Security Act of 1974
FY	fiscal year
GAO	U.S. Government Accountability Office
IRS	Internal Revenue Service
MPPAA	Multiemployer Pension Plan Amendments Act of 1980
NCCMP	National Coordinating Committee for Multiemployer Plans
PBGC	Pension Benefit Guaranty Corporation
ME-PIMS	Multiemployer Pension Insurance Modeling System
PPA	Pension Protection Act of 2006
PRA	Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010
UFCW	United Food and Commercial Workers
WRERA	Worker, Retiree, and Employer Recovery Act of 2008

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United States Government Accountability Office
Washington, DC 20548

March 28, 2013

The Honorable John Kline
Chairman
Committee on Education and the Workforce
House of Representatives

Dear Mr. Chairman:

Multiemployer plans—defined benefit plans established through collectively bargained pension agreements between labor unions and two or more employers—are a vital source of retirement income for millions of Americans. Multiemployer plans cover unionized workers in many industries, such as trucking, retail food, construction, mining, and garment making. There are about 1,500 multiemployer plans covering more than 10 million workers and retirees. The structure of multiemployer plans has some advantages compared to single-employer plans. For example, workers in multiemployer plans can continue to accrue pension benefits when they change employers if their new employer is a contributing employer in the same plan. Thus, these plans provide some portability of benefits and can be particularly beneficial to workers who change employers as long as their new employer participates on the same plan. However, the structure of multiemployer plans can also pose challenges in some cases. Unlike plans sponsored by a single-employer in which plans do not share risk with other employers, a multiemployer plan continues to operate if an individual employer leaves or goes out of business, leaving the remaining employers to cover any unfunded benefits of the vested workers of the departed employers. Many plans are in declining industries that have witnessed numerous bankruptcies, leaving a considerable share of participants with no contributing employer. This effect, combined with an aging workforce and declining unionization, leaves many plans facing demographic challenges that threaten their long-term financial outlook.

In 2010, we reported that due to investment market declines and demographic challenges, most multiemployer plans had large funding shortfalls and faced an uncertain future.¹ We noted that some plans would

¹ GAO, *Private Pensions: Changes Needed to Better Protect Multiemployer Pension Benefits*, [GAO-11-79](#) (Washington, D.C.: October 2010).

likely be able to improve their funded status with improvements to the economy, but plans in the worst condition may have been unable to fully address these challenges through increasing employer contributions or reducing certain benefits. We found that without additional options to address plan underfunding or to attract new contributing employers, plans may be more likely to require financial assistance from the Pension Benefit Guaranty Corporation (PBGC). This would, in turn, further strain the multiemployer pension insurance program that PBGC operates.² More recently, a January 2013 report published by three federal agencies noted the grave condition of some multiemployer plans and PBGC's multiemployer insurance program.³ This tri-agency report further noted that unless timely action is taken to provide additional tools for the multiemployer plan trustees to stabilize the financial conditions of their plans, more costly and intrusive intervention may ultimately be necessary.

Given the financial challenges that multiemployer plans continue to face, we sought to answer the following questions:

- 1) What actions have multiemployer plans in the weakest financial condition taken in recent years to improve their long-term financial position?
- 2) To what extent have plans relied on PBGC assistance since 2009, and what is known about the prospective financial condition of the multiemployer plan insurance program?
- 3) What options are available to address PBGC's impending funding crisis and enhance the program's future financial stability?

To answer these questions, we analyzed government and industry data; reviewed relevant federal laws, regulations, and documentation from

² PBGC is on GAO's High Risk List. For more information, see GAO, *High-Risk Series: An Update*, [GAO-11-278](#) (Washington, D.C.: February 2011).

³ U.S. Department of Labor, U.S. Department of the Treasury, Pension Benefit Guaranty Corporation, *Multiemployer Pension Plans: Report to Congress Required by the Pension Protection Act of 2006* (Washington, D.C.: January 2013). Additional substantive information on this issue is contained in two PBGC reports also published recently. These are *PBGC Insurance of Multiemployer Pension Plans: Report to Congress Required by the Employee Retirement Income Security Act of 1974, as amended*, Pension Benefit Guaranty Corporation, Washington D.C., January 2013 and *FY 2012 PBGC Exposure Report*, Pension Benefit Guaranty Corporation.

plans; and interviewed a wide range of industry experts and stakeholders. In particular, to identify actions that multiemployer plans in the weakest financial condition have taken to improve their long-term financial position, we reviewed the survey methodology and analyzed multiemployer plan survey data from the Segal Company, a large actuarial firm with a client base representing about 25 percent of multiemployer plans. To supplement the survey data, we conducted structured interviews with 13 multiemployer plans across the country. We selected these plans in order to obtain a range of key characteristics, including industry, region, funded status, and number of participants. Among the 13 plans included in our review, 8 plans were in critical status, 2 plans were in endangered or seriously endangered status, and 3 plans were in neither critical nor endangered status.⁴ To determine the extent to which plans have taken advantage of PBGC financial assistance and to assess the financial condition of PBGC's insurance program, we obtained PBGC data on various types of assistance to plans and data regarding plans that are insolvent or expected to become so in the next 20 years. To identify options available to address PBGC's impending funding crisis and enhance its future financial stability, we distinguished between options that would address the more immediate funding crisis facing plans headed toward insolvency and options that may enhance the long-term stability of the multiemployer system for plans that may not be headed for insolvency, but, nevertheless, face financial challenges. In addition, we assessed the tradeoffs of various options for current workers, retirees, and employers, as well as the federal government. To identify and assess available options, we interviewed government officials, pension experts—including academics, actuaries, attorneys, multiemployer plans' trustees and administrators, employers and trade associations, unions, advocacy organizations, and other relevant stakeholders. We also reviewed relevant research and documentation, including proposals by the National Coordinating Committee on

⁴ "Endangered," "seriously endangered," and "critical" statuses are designations created by the Pension Protection Act of 2006 and are defined later in this report.

Multiemployer Plans (NCCMP) and a consortium of employer representatives from the construction industry.⁵

We conducted this performance audit from March 2012 through March 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Multiemployer defined benefit (DB) pension plans are created by collective bargaining agreements between labor unions and two or more employers, and generally operate under the joint trusteeship of unions and employers. Such plans typically exist in industries with many small employers who may be unable to support an individual DB plan, or where seasonal or irregular employment results in high labor mobility between employers. Industries where multiemployer plans are prevalent include trucking, construction, retail, and mining and manufacturing. Like single-employer DB plans, multiemployer DB plans pay retirees a defined benefit after retirement.⁶

Under the Employee Retirement Income Security Act of 1974 (ERISA), as amended,⁷ the benefits of multiemployer plans are insured by PBGC.⁸ As

⁵ NCCMP is an organization representing multiemployer plans and practitioners. In August 2011, NCCMP convened a commission to review and propose options for addressing challenges facing multiemployer plans. NCCMP's report "Solutions not Bailouts: A Comprehensive Plan from Business and Labor to Safeguard Multiemployer Retirement Plan Security, Protect Taxpayers and Spur Economic Growth" was released in February 2013. The commission members include representatives from plans, employers, and unions. Participating industries include construction, trucking, retail food, entertainment, machinists, mining, bakery and confectionary, and service. We also spoke with a wide range of plan representatives, including executive staff and both union and employer trustees.

⁶ Multiemployer pension plans are commonly associated with parallel multiemployer funds providing medical coverage and other welfare-type benefits.

⁷ 29 U.S.C. § 1001 nt.

shown in table 1, PBGC's multiemployer fund is financed by insurance premiums paid by plans, with each multiemployer plan paying an annual premium of \$12 per participant to PBGC as of 2013.⁹ In return, PBGC provides financial assistance in the form of loans to plans that become insolvent, that is, plans that do not have sufficient assets to pay pension benefits at the PBGC guaranteed level for a full plan year. Although such financial assistance is referred to as a "loan," and is by law required to be repaid, in practice such loans have almost never been repaid, as plans generally do not emerge from insolvency. Before PBGC will provide the loans, participants' retirement benefits must be reduced to a level specified in law.¹⁰ Even after insolvency, the plan remains an independent entity managed by its board of trustees. This contrasts with the agency's single-employer program under which PBGC does not provide assistance to ongoing plans, but instead takes over terminated underfunded plans as a trustee, and pays benefits directly to participants.

⁸ 29 U.S.C. § 1322a. The multiemployer insurance program is maintained separately from another PBGC fund, which insures the benefits of single-employer pension plans. Among other things, the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), made employers liable for their share of unfunded plan benefits when they withdraw from a plan, unless relieved by special provisions, and strengthened certain funding requirements. Pub. L. No. 96-364, §§ 104(2) and 304, 94 Stat. 1208, 1217 and 1293-94.

⁹ The Moving Ahead for Progress in the 21st Century Act (Map-21) increased the premium by \$3 per participant for 2013 and provided that after 2013, the multiemployer plan premium will continue to be indexed for increases in the annual rate of growth in the national average wage. Pub. L. No. 112-41, § 40222, 126 Stat. 405, 852 (2012).

¹⁰ For participants of plans that became insolvent after December 21, 2000, annual benefits paid by plans receiving PBGC loans are the product of a participant's years of service multiplied by 1) 100 percent of the first \$11 of the monthly benefit accrual rate, and 2) 75 percent of the next \$33 of the accrual rate. For someone with 30 years of service, the guaranteed annual benefit limit is \$12,870. In contrast, PBGC's single-employer program guarantees full benefits up to a maximum of \$57,477.24 per year at age 65 for plans that terminate in 2013.

Table 1: Selected Differences between Single-employer and Multiemployer Defined Benefit Pension Plans

Plan characteristic	Single-employer plans	Multiemployer plans
PBGC benefit guarantee levels	PBGC guarantees benefits up to \$57,477.24 per year for a retiree at age 65 in plans that terminate in 2013. Guarantee levels are indexed for inflation.	PBGC guarantees benefits up to \$12,870 per year, based on 30 years of employment. Guarantee levels are not indexed for inflation.
PBGC premium structure	In 2013, plans pay PBGC a flat rate of \$42 per participant that is indexed for inflation. Plans are also subject to a variable rate premium based on underfunding. Terminating plans are also subject to a termination premium.	In 2013, plans pay PBGC an annual flat rate premium of \$12 per participant. The premium is indexed for inflation.
Insurable events	The insurable event is plan termination, often due to the bankruptcy of a plan sponsor with an underfunded plan, after which PBGC assumes responsibility and pays benefits directly to participants.	The insurable event is plan insolvency.
Provision of financial assistance	PBGC provides no financial assistance to plans but instead takes over terminated underfunded plans as trustee.	PBGC provides loans to plans when they become insolvent, and a plan need not be terminated to qualify for financial assistance. Insolvent plans also are required to reduce or suspend payment of any portion of benefits to beneficiaries that exceeds PBGC's guarantee level. If a plan recovers from insolvency, it must begin repaying the PBGC loan.
Fiduciary and settlor function ^a	Sponsor generally assumes fiduciary role in addition to its settlor role.	Individual employers do not assume a fiduciary role in plan management, which is instead handled by a board of trustees.
Risk distribution	Plans generally do not share the risk with other employers.	Plans typically continue to operate after an individual employer goes out of business because the plan's remaining employers are collectively liable for funding benefits for all vested participants.
Portability of benefits ^b	Plans are generally maintained by only one employer and their benefits are not normally portable.	Plans provide participants some benefit portability because they allow workers to continue to accrue pension benefits when they change jobs as long as their new employer also participates in the same plan. Many plans provide reciprocity, allowing portability among plans.
Ability to adjust contribution and benefit levels	Employers, depending on their employees' bargaining rights, may make adjustments to future contributions and benefits according to the company's fiscal condition provided that minimum funding requirements are met.	Typically, the collective bargaining parties set the contribution rates for the duration of the collective bargaining agreements and plans may have to wait 2 or 3 years before all agreements are renegotiated to increase contribution rates.
Plan terminations	PBGC assumes trusteeship and administers payment of participant benefits when an underfunded plan terminates with a bankrupt sponsor.	If an employer withdraws from a plan, the accrued benefits for its workers stay in and are administered by the plan. The plan terminates by mass withdrawal of all contributing employers. When a plan becomes insolvent, PBGC does not take over trusteeship but instead provides financial assistance to its trustees, who continue to administer the plan until all benefits are paid out.

Plan characteristic	Single-employer plans	Multiemployer plans
Employer withdrawal	Withdrawal liability does not apply to single-employer plans sponsors. However, employers are liable for benefits earned by their employees and to PBGC for any underfunding.	An employer seeking to withdraw from a plan is liable for its allocable share of the plan's unfunded vested benefits for all employees covered by the plan. In cases of bankruptcy, the remaining employers in the plan assume responsibility for funding benefits to the bankrupt employer's participants.

Source: GAO analysis of ERISA, PBGC documents, and prior GAO reports.

^aA settlor or settlor function, typically of a plan sponsor or employer, includes functions such as establishing a plan and choosing its design and features. A settlor or settlor function typically does not include any fiduciary responsibility and therefore can include consideration of a company's business interests.

^bMultiemployer plans provide portability in that they enable participants to change employers under the plan without interrupting their benefit coverage.

Congress included provisions directed at imposing greater financial discipline on multiemployer plans in the Pension Protection Act of 2006 (PPA).¹¹ Specifically, as outlined in table 2, this law includes new provisions designed to compel multiemployer plans in poor financial shape to take action to improve their financial condition over the long term. The law established two categories of troubled plans—endangered status (commonly referred to as “yellow zone,” and which includes an additional subcategory of “seriously endangered”) and a more seriously troubled critical status (commonly referred to as “red zone”). PPA further requires plans in these categories to develop strategies that include contribution increases, benefit reductions, or both, designed to improve their financial condition in coming years. Multiemployer plans in endangered status are to document these strategies in a funding improvement plan, and multiemployer plans in critical status plans are to do so in a rehabilitation plan. The plan trustees can offer the bargaining parties multiple schedules from which to choose, but one of these must be designated as the “default schedule,” which is to be imposed if the bargaining parties do not select one of the schedules within a specified timeframe. Once plan trustees have adopted a funding improvement or rehabilitation plan, bargaining parties are to select one of the available benefit and/or contribution schedules through the collective bargaining

¹¹ Pub. L. No. 109-280, 120 Stat. 780.

process. The multiemployer plan is then required to report on progress made in implementing its funding improvement or rehabilitation plan.¹²

Table 2: PPA Provisions Related to Endangered and Critical Status Plans

Zone Status	Criteria ^a	Required plans and objectives ^b	Additional flexibilities
Endangered	<ul style="list-style-type: none"> Plan is less than 80 percent funded or is projected to have a funding deficiency within 7 years. 	<u>Funding Improvement Plan</u> Designed to close the funding gap by one-third over 10 years.	None
Seriously Endangered	<ul style="list-style-type: none"> Plan is both less than 80 percent funded and is projected to have a funding deficiency within 7 years. 	<u>Funding Improvement Plan</u> Designed to close funding gap by one-fifth over 15 years.	None
Critical	<ul style="list-style-type: none"> Plan is less than 65 percent funded and projects a funding deficiency within 4 years or projects insolvency within 6 years; or the plan projects a funding deficiency within 3 years; or liabilities for inactive participants are greater than for active participants, contributions are less than normal cost—defined as the annual growth in pension liabilities resulting from an additional year of service by plan participants—and interest on unfunded liabilities, and a funding deficiency is expected within 4 years; or the plan projects insolvency within 4 years. 	<u>Rehabilitation Plan</u> Designed to get the fund out of critical status within 10 years.	Plan can also reduce “adjustable benefits”—that is, certain optional benefit payments such as early retirement and disability benefits for participants who have not yet retired; reductions in the level of accrued benefits payable at normal retirement remains generally prohibited. ^c

Source: GAO analysis of PPA requirements.

^aA plan’s “percent funded” or funded percentage is defined as the percentage of plan assets to the plan’s actuarial accrued liability. For this purpose, plan assets are allowed to be measured using a “smoothed” value that delays recognition of market fluctuations. A plan has an accumulated funding deficiency if, according to calculations specified by ERISA, required minimum contributions have not been made to the plan.

^bAs described below, Congress subsequently allowed eligible plans to opt for a 3 year extension, so that endangered and critical status plans would have 13 rather than 10 years (and seriously endangered plans would have 18 rather than 15 years) to close the funding gap.

^cUnder 29 U.S.C. § 1085(e)(8)(A)(iv)(III), benefit increases that are not eligible for a PBGC guarantee under 29 U.S.C. § 1322a (i.e., benefit increases adopted or first effective less than 60 months before the first day of the first critical status year) may be reduced even if the participant has started receiving his or her benefit.

¹² While endangered or critical plans are in a funding improvement or rehabilitation period, they must report annually on whether scheduled progress has been made under the plan in their Form 5500 filings.

Because of the greater severity of critical status plans' funding condition, such plans have an important exception to ERISA's anti-cutback rule¹³ in that they may reduce or eliminate certain so-called "adjustable benefits" such as early retirement benefits or subsidies, certain post-retirement death benefits, and disability benefits for plan participants who have not yet retired. For example, if a critical status plan were to adopt a rehabilitation plan that proposed to eliminate an early retirement benefit, appropriate notice was provided, and the reduction agreed to in collective bargaining, then participants not yet retired would no longer be able to receive that early retirement benefit.¹⁴

PPA funding requirements took effect in 2008 just as the nation was entering a severe economic crisis. The dramatic decline in the value of stocks and other financial assets in 2008 and the accompanying recession broadly weakened multiemployer plans' financial health.¹⁵ In response, Congress enacted the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) which contained provisions designed to help pension plans and participants by providing funding relief to help them navigate the difficult economic environment.¹⁶ For example, WRERA relief measures allowed multiemployer plans to temporarily freeze their funding status at the prior year's level, and extend the timeframe for plans' funding improvement or rehabilitation plans from 10 to 13 years.¹⁷ In addition, Congress enacted the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA), which provides additional funding relief measures for multiemployer plans as long as a plan meets certain solvency requirements.¹⁸ Generally, PRA

¹³ Subject to certain exceptions, once an individual's benefit is vested (or earned), the vested benefit cannot be cut back through a plan amendment. 26 U.S.C. § 411(d)(6) and 29 U.S.C. § 1054(g).

¹⁴ 26 U.S.C. § 432(e)(8). Certain specific conditions apply to the ability to "adjust" these benefits.

¹⁵ Because employer contributions to multiemployer plans are generally based on hours worked, the high unemployment rates that accompany an economic recession also reduce plan revenue and negatively affect plan funding levels.

¹⁶ Pub. L. No. 110-458, 122 Stat. 5092.

¹⁷ WRERA relief measures extended seriously endangered plans' funding improvement period from 15 to 18 years.

allows a plan to amortize the investment losses from the 2008 market collapse over 29 years rather than 15 years, and to recognize such losses in the actuarial value of assets over 10 years instead of 5 years, so that the negative effects of the market decline on asset values are spread out over a longer period.¹⁹

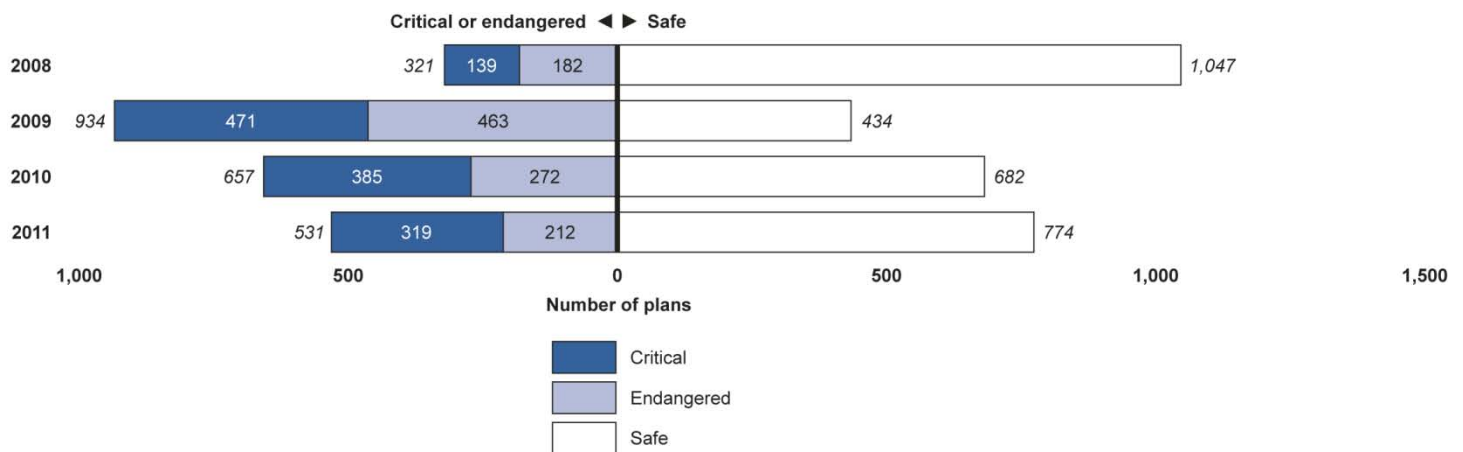
Overall, since 2009, multiemployer plans have experienced improvements in funding status, but a sizeable portion of plans are still critical or endangered. According to plan-reported data—current through 2011—from the IRS (see fig. 1), while the funding status of plans has not returned to 2008 levels, the percentage of plans in critical status declined from 34 percent in 2009 to 24 percent in 2011.²⁰ Similarly, the percentage of plans in endangered status also declined, and to a greater extent, from 34 percent in 2009 to 16 percent in 2011. However, based on the 2011 data from the IRS, despite these improvements, 40 percent of plans still have not emerged from critical or endangered status.

¹⁸ Pub. L. No. 111-192, 124 Stat. 1280. To meet PRA's solvency test, a plan must demonstrate that it has sufficient assets to timely pay expected benefits and anticipated expenditures over the period of time when PRA relief measures would take effect.

¹⁹ Such "asset smoothing" is an actuarial technique used to focus decision making on the long term, and avoid disruptive reactions to short term fluctuations in asset values. Just as this technique prevents assets from being fully marked down after a severe market decline, it prevents assets from being fully marked up following a rally in asset values, though only if the technique is followed consistently.

²⁰ Although WRERA funding relief measures allowed plans to temporarily freeze their funding status at the prior year's level, actuarial certifications were required to reflect a plan's zone status without regard to the application of WRERA relief. However, PRA funding relief was permitted to be reflected in a plan's actuarial certification, and so PRA funding relief had an effect on the zone status of many plans in 2010 and 2011.

Figure 1: Number of Multiemployer Plans in Each Funding Zone Status, as Certified with IRS, 2008 through 2011



Source: GAO analysis of Internal Revenue Service annual certification data.

Note: The total number of plans filing a zone-status certification declined from 2008 to 2011. According to IRS, the decline may be attributable to plan mergers or terminations and plans' failure to file a certification.

Severely Underfunded Plans Have Cut Benefits to Current Employees and Increased Employer Contributions, but Financial Outlook for Some Plans Remains Bleak

The large majority of the most severely underfunded multiemployer plans—those in critical status—have, according to a 2011 survey, both increased required employer contributions and reduced participant benefits in an effort to improve plans' financial positions. Plan officials explained that these changes have had or are expected to have a range of effects, and in some cases may severely affect employers and participants. While most critical status plans expect to recover from their current funding difficulties, about 25 percent do not and instead seek to delay eventual insolvency.

Critical Status Plans Have Established a Range of Contribution Increases and Benefit Cuts

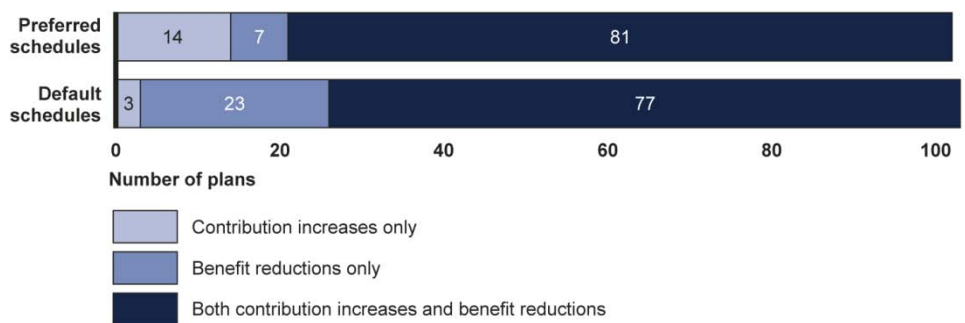
A 2011 survey of 107 critical status multiemployer plans conducted by the Segal Company shows that the large majority developed rehabilitation plans that included a combination of both contribution increases and benefit reductions to be implemented in the coming years.²¹ Further, plans proposed to take these measures regardless of whether the bargaining parties adopt the preferred schedule or the default schedule.²² As figure 2 illustrates, of the preferred schedules of 107 critical plans surveyed, 81 included both contribution increases and benefits cuts, while 14 proposed contribution increases only, and 7 included benefit reductions only. Most default schedules also include both increased contributions and reduced benefits, but compared to the preferred schedules, a much larger percentage chose to reduce benefits only. The reason for this difference is not clear, but Segal Company officials noted that because prompt adoption of an acceptable schedule is desirable, some plans may take special steps to make the default plan especially unappealing.²³

²¹ Unless otherwise noted, data pertaining to actions that critical status plans have taken to emerge from critical status are based on a 2011 survey conducted by the Segal Company, a large actuarial firm that provides consulting services to multiemployer plans that account for about 25 percent of multiemployer plans and about 30 percent of multiemployer plan participants. See appendix I for more details on this data and overall methodology. The same data was the basis of a 2011 report, *Multiemployer Plans Respond to the Financial Crisis*, Judith F. Mazo and Eli Greenblum, Pension Research Council Working Paper PRC WP2011-15, September 2011.

²² The survey defined the “preferred schedule” as the schedule of contribution increases and benefits reductions that plan trustees intend to be most desirable or which has become the dominant schedule through collective bargaining. According to PPA, the default schedule is the schedule to be imposed on bargaining parties if they fail to agree on the preferred schedule or another provided by plan trustees.

²³ *Multiemployer Plans Respond to the Financial Crisis*, Pension Research Council.

Figure 2: Number of Plans Proposing Actions in Rehabilitation Plans



Source: GAO representation of data compiled by Segal Company.

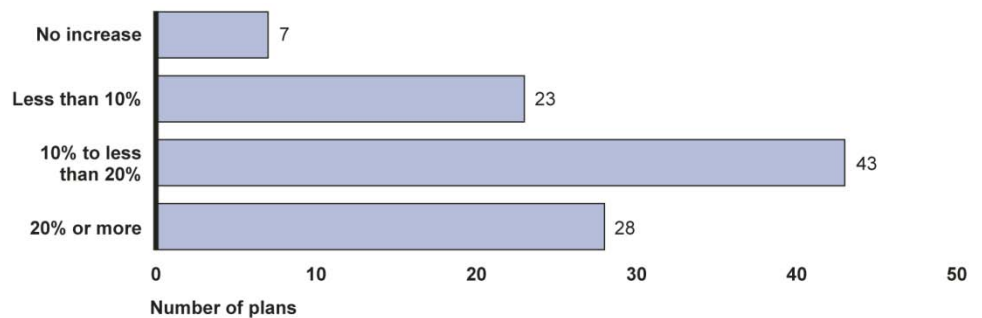
Note: Of the 107 plans surveyed, this chart does not reflect 4 plans that determined they would emerge from critical status with no action. Also, the preferred schedule bar excludes one plan that submitted only a default schedule.

Most plans—95 out of 107—developed preferred schedules that called for contribution increases and, while the range of these increases varied widely among plans, some were quite high.²⁴ As figure 3 shows, most plans proposed increases of 10 percent or more in the first year of the collective bargaining agreement, and a little over a quarter of plans proposed increases of 20 percent or more. The median first-year contribution increase was 12.5 percent. Overall, the range of first-year increases was quite broad however, ranging from less than 1 percent to 225 percent. These data tell only a partial story, however, because rehabilitation plans may mandate a series of contribution increases in subsequent years. Of the eight critical status plans we contacted, the rehabilitation plans of seven increased contribution rates, and six of these specified a series of contribution increases over subsequent years. For example, one plan proposed contribution increases of 10 percent compounded annually over 10 years, so that at the end of this period, a

²⁴ Unless otherwise noted, discussion of contribution increases and benefit cuts in the remainder of this section refers to those outlined in the preferred schedule of the rehabilitation plan.

contribution rate of \$2.00 per hour, for example, would have been increased to \$5.25 per hour, or by 162 percent.²⁵

Figure 3: Percentage Contribution Increases in Rehabilitation Plans in First Year



Source: GAO representation of data compiled by Segal Company.

Note: Of the 107 plans surveyed, these figures exclude the four “do nothing” plans that proposed neither to increase contributions nor reduce benefits, and two other plans for which preferred schedule data were not available. The contribution increases reflect those to be made in the first year of the subsequent collective bargaining agreement.

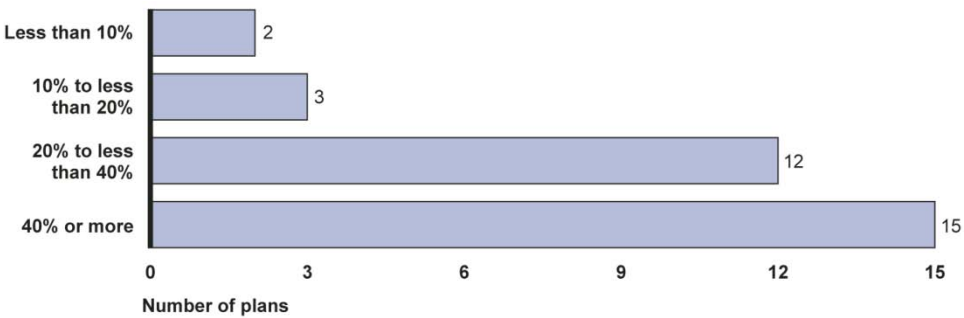
Thirty-two plans developed rehabilitation plans that reduced the rate of future benefit accruals.²⁶ As figure 4 illustrates, 15 of these plans reduced future benefit accruals by 40 percent or more, and another 12 plans reduced future benefit accruals 20–40 percent. The median reduction for all 32 plans was 38 percent. As with contribution increases, the survey data on reductions to benefit accrual rates paint only a partial picture. Reductions in the benefit accrual rate are more common among troubled multiemployer plans than these data show because such reductions were often made prior to the rehabilitation plan. For example, findings from the Segal Company’s survey show that, of the plans that expected to exit critical status within the specified timeframes, about one-third had cut

²⁵ The 2013 tri-agency report found a similar pattern, reporting that summaries of rehabilitation plans in Form 5500 filings indicate that schedules adopted by many bargaining parties required contribution rate increases of 7 percent or more for an extended period. *Multiemployer Pension Plans: Report to Congress Required by the Pension Protection Act of 2006*.

²⁶ Workers accrue retirement benefits according to benefit formulas that vary widely depending on the plan. For example, a participant may earn a flat dollar amount for each year of service, or a percentage of the contributions required for a worker’s covered service. According to the Employee Benefit Research Institute, most multiemployer plans base benefits on length of service and not on their wage or salary level.

future accrual rates before preparation of the rehabilitation plan, either directly or by a plan amendment that excluded recent contribution increases from the benefit formula.

Figure 4: Percentage Accrual Rate Reductions in Rehabilitation Plans



Source: GAO representation of data compiled by Segal Company.

Also, a large majority of plans—88 out of 107—reduced one or more types of the adjustable benefits as outlined by the PPA.²⁷ Typically, these reductions applied to both vested but inactive and active participants, but some plans applied them to only one or the other.²⁸

Plan Officials Indicated That Efforts to Improve Funding Will, in Some Cases, Require Significant Sacrifices by Employers and Active Participants

Impact of Contribution Increases

Officials of seven of the eight critical status plans we contacted increased contributions rates, and several of these plans indicated that contribution

²⁷ This data is roughly comparable to data reported in the 2013 tri-agency report, *Multiemployer Pension Plans: Report to Congress Required by the Pension Protection Act of 2006*. This report found that of 378 plans self-certifying as critical status in 2010, 96 reduced only adjustable benefits, 42 reduced only future benefits, and 53 did both.

²⁸ As PBGC officials noted, the impact of these reductions depend on how many types of adjustable benefits were reduced as well as the number of participants affected.

increases could be absorbed without undue stress to the plan. For example, one plan representing maintenance workers proposed to increase the weekly employer contribution rate for each worker from \$82.75 per employee in 2011 to \$130.75 per employee in 2023, a 58 percent increase over 12 years. While this makes some significant demands on employers, they are nonetheless in agreement, and the reaction of both employers and participants to the rehabilitation plan has been constructive. Similarly, officials of another plan covering sheet metal workers said that the annual contribution increases ranging from 30 percent in 2009-2010 to 5.8 percent in 2015-2016 can be absorbed by plan employers without great difficulty.

In contrast, officials of some plans and contributing employers we contacted said that contribution increases would have very severe negative effects on some employers and possibly the plan itself. For example, officials of one plan told us that a proposed series of annual increases of 10 percent (compounded) represents a significant increase in labor costs. Plan officials said contributing employers are competing against firms outside of the plan that do not have comparable pension or health insurance costs, and contribution increases put them at a competitive disadvantage. Similarly, an official of a long-distance trucking firm said that the high contribution rates of underfunded multiemployer plans have greatly affected this firm's cost structure and damaged its competitive position in the industry. In other cases, plans may have been unable to increase contributions as much as necessary. For example, our review of one plan's rehabilitation plan revealed that the 15 percent contribution increase resulted from a difficult balance between, among other factors, adequately funding the plan and avoiding excessive strain on employers. According to the plan administrator, plan trustees determined that many contributing employers were in financial distress and that a significant increase in contributions would likely lead to business failures or numerous withdrawals. After the rehabilitation plan was adopted, five employers withdrew from the plan.

Contribution increases could have a significant impact on participating workers as well as employers because in some cases at least a portion of the increases will be funded through reductions in pay or other benefits. For example, officials of one large national plan with hundreds of contributing employers in a variety of industries told us that employers will pass a substantial part of the higher contributions to employees in the form of lower wages. They noted that workers' wages have been stagnant for 10 years, so the need to return to full funding so quickly in accordance with the Pension Protection Act of 2006 (PPA) requirements is hurting

workers in the short term. More broadly, a recent report developed by a construction industry consortium notes that higher contributions make less money available for wage increases and other benefits. The report further notes that in some cases the additional contribution comes directly from the existing wage package, so a worker's take home pay may remain stagnant or even be reduced.²⁹ In other cases, the contribution increases will not have an immediate impact on participants' pay, but will affect other portions of their benefit package. For example, one plan opted to increase pension contributions by diverting 2 percent of employers' contributions from another benefit account. An official of another plan explained that the plan funded increased pension contributions by, for example, reducing contributions to a health benefit plan. Instead of directly reducing current wages, these actions will likely lead to higher health care costs or reduced benefits for employees.

Impact of Benefit Reductions

Among plans we contacted that had reduced future benefit accruals in recent years, the cumulative impact varied. For example, officials of one plan covering sheet metal workers explained that since 2003 the plan had reduced future benefit accruals by 75 percent per each dollar contributed to the plan. Another plan covering mine industry workers completely eliminated future benefit accruals for new, inexperienced miners hired on or after January 1, 2012, even though a contribution of \$5.50 per hour of work will be made on their behalf. Another plan made no changes to benefit accrual rates but made a series of changes to eligibility and thresholds for retirement credits, with the result that some employees will have to work longer to accrue the same benefit they would have before adoption of the rehabilitation plan.

The reduction or elimination of adjustable benefits, such as those outlined in table 3, were also significant and controversial in some cases. Officials of several of the plans that we contacted told us that the reduction or elimination of early retirement benefits for participants working in physically demanding occupations would be particularly difficult for some workers. As one official explained, working longer can be a grim scenario for older workers who have a hard time bearing the physical demands of labor, such as in a paper mill, for example. At the same time, some plans

²⁹ *Construction Employers DOL-EBSA/PBGC/Treasury Pension Report*, Construction Employers for Responsible Pension Reform, December 22, 2011. An industry consortium prepared this report for the 3 federal agencies as the agencies prepared a report for Congress mandated by the PPA.

also eliminated or imposed limitations on disability retirement, so that, as officials of one plan noted, even workers who have developed physical limitations will have to either continue to work, or retire on substantially reduced benefits.³⁰ Representatives of one plan said that there was considerable resistance from workers to the cuts in early retirement benefits. The officials explained, however, that these benefits had been established in the early 1990s when the plan was very well funded and that these promises had to be withdrawn in light of the plan's current poor financial picture.

Table 3: Selected Examples and Impact of Adjustable Benefits Reductions

Adjustable benefit	Examples of adjustable benefit reductions	Impact on participants
Early retirement subsidy	Increase in the early retirement penalty if a worker retired before age 65.	Before rehabilitation plan, a 55-year old retiree could have obtained 90 percent of retirement benefit, but only about 45 percent thereafter.
Disability retirement	Elimination of disability benefit for those not classified as disabled for purposes of the Social Security disability program.	Worker would have to be totally disabled for work in order to receive a retirement benefit instead of disabled for current job only, such as physically demanding construction work.
60-month and 120-month guarantees	Elimination of guaranteed payment periods for full pension benefit to a designated beneficiary if a participant died within 60 months (5 years) or 120 months (10 years) after retirement, depending on the applicable plan.	Possible substantial reduction in retirement benefits to designated beneficiary of retiree.
Elimination of subsidy for "pop-up" benefit	Elimination of subsidy for "pop-up" benefit that would increase a participant's benefit that had been reduced to pay for surviving spouse protection, if the spouse pre-deceases the participant.	Possible substantial reduction in retirement benefits to retirees whose spouses pre-decease them.

Source: Selected rehabilitation plans and communications with pension plan officials.

Benefit reductions can affect employers as well as plan participants. For example, representatives of one construction industry plan told us that the reduced benefits outlined in the rehabilitation plan had reduced their ability to recruit and train new apprentices. These representatives explained that the prospect of earning only \$50 of monthly retirement

³⁰ Two plans reduced or eliminated disability retirement benefits for workers who are not disabled according to the criteria used by the Social Security Administration. As a result, instead of being disabled only for his or her current occupation in order to qualify for a disability retirement, the worker will have to obtain certification of disability under the Social Security program, which further requires a determination that a worker cannot adjust to other work due to his or her medical condition.

Measures Directed at
Withdrawing Employers

benefit per year of work—which after a 30-year career would result in only \$1,500 payment per month in retirement—is not very appealing to prospective employees. While this does present a barrier to recruitment, a plan representative told us it is mitigated by an attractive hourly wage of \$31.40, and the fact that many of the younger workers today are thankful for a paycheck in the current economic environment.

Some rehabilitation plans also included provisions designed to protect the plan from employer withdrawals. For example, as table 4 outlines, two of the eight critical status plans we contacted impose much more severe benefit reductions on employees of firms that subsequently choose to withdraw from the plan. According to one of the rehabilitation plans, maintaining the contribution base of the pension plan is essential to the success of the rehabilitation plans and hence for plan participants and their families. Officials of this pension plan said that the pension plan cannot survive if it continues to lose contributing employers, and penalizing their employees is one way of discouraging withdrawals.

Table 4: Examples of Benefit Cuts to Be Applied to Employees of Withdrawing Employers but Not to Those of Employers Remaining in the Plan

Benefit cuts	
Plan A	<ul style="list-style-type: none">No eligibility for disability pension or early retirement subsidyNo availability of optional forms of pension, such as 120-month guarantee of payments to the beneficiary of a deceased participantElimination of pre-retirement death benefit
Plan B	<p>All adjustable benefits eliminated, including</p> <ul style="list-style-type: none">Any right to receive a retirement benefit before age 65All disability benefits for those not yet receiving themPre-retirement death benefits, with one exception^aPost retirement death benefits that are not part of an annuity

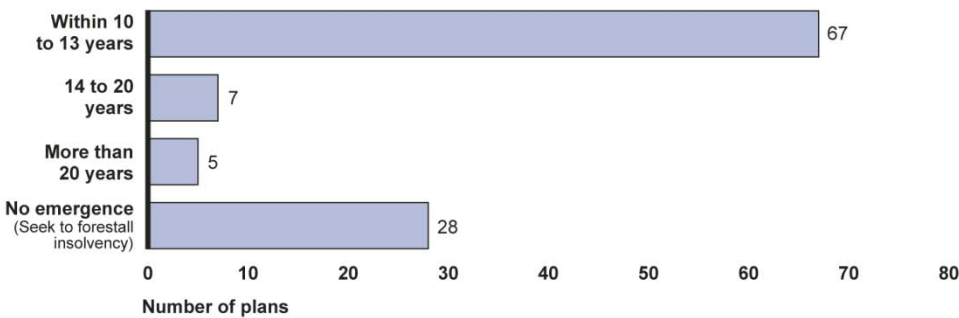
Source: Selected rehabilitation plans
^aElimination of the pre-retirement death benefit excludes the required surviving spouse annuity.

About 25 Percent of
Critical Status Plans
Surveyed Face Eventual
Insolvency

The Segal survey of critical status plans indicates that while most plans aimed to eventually emerge from critical status, a significant number reported that they do not and instead project eventual insolvency. As figure 5 illustrates, of the 107 plans surveyed, about 67 expect to emerge from critical status within the statutory time frames of either 10 to 13 years, and 12 others in an extended rehabilitation period. However, 28 of the surveyed plans had determined, as the authors of the survey noted,

that no realistic combination of contribution increases and benefit reductions would enable them to emerge from critical status, and that their best approach is to forestall insolvency for as long as possible. Among these plans, the average number of years to expected insolvency was 12, with some expecting insolvency in less than 5 years and others not for more than 30 years. The majority of these plans expected insolvency in 15 or fewer years.

Figure 5: Plans' Expectations about Emergence from Critical Status



Source: GAO representation of data compiled by Segal Company.

Among the plans we contacted, four expected to eventually become insolvent. In general, officials of these plans told us that a combination of massive investment losses and deterioration in contribution bases were primary causes of their financial difficulties. For example, officials of one plan cited the closure of paper mills from which the plan previously derived a substantial share of contributions as a cause of the plan's financial distress. Officials of these plans explained that their analyses concluded that no feasible combination of contribution increases or benefit reductions could lead them back to a healthy level of funding. Several officials indicated that an effort to do so would likely accelerate the demise of the plan. For example, our review of plan documents revealed that the actuary of one fund determined that mathematically the fund would be able to emerge from critical status if contribution rates were increased by 24 percent annually for each of the next 10 years, ultimately increasing to a rate that would be about 859 percent of the then-current contribution rate. The trustees of this plan determined that such a proposal would be rejected by representatives of employers and workers, and would likely lead to negotiated withdrawals by plan employers. This, in turn, could result in insolvency of the plan, possibly as early as 2019. Instead, this plan opted for measures that officials believed are most likely to result in continued participation in the fund, yet which nonetheless are

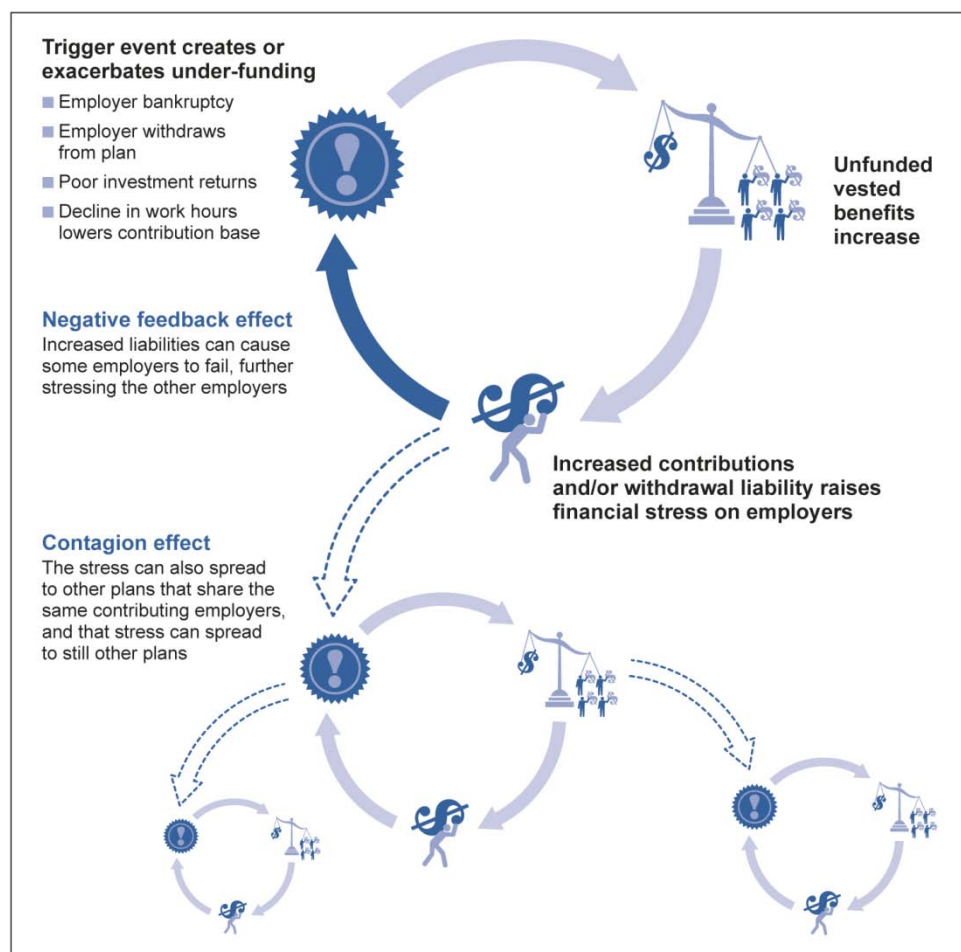
projected to forestall insolvency until about 2029. Similarly, according to officials of another plan, plan trustees concluded that the significant contribution increases necessary to avoid insolvency were more than employers in that geographic area could bear. In addition, the plan considered the impact of funding the necessary contribution increases through reductions to base pay. The plan determined that this also would not be feasible because of the rising cost of living facing these employees and their families. Consequently, the plan trustees adopted a rehabilitation plan that forestalls insolvency until about 2025.

Plans' Concerns for the Future

Officials of plans that we contacted expressed a number of concerns about the future, including concerns about financial market returns, the overall economy, and the stability of contributing employers. For example, officials of one plan that expected to emerge from critical status within the next 10 years said that this could be impeded if investment returns were below expectations, and especially if another collapse in the financial markets occurs. Officials of the seven other critical status plans we contacted echoed this concern, and several mentioned that overall economic conditions affect hours worked and hence overall contributions. For example, officials of a plan covering construction industry workers expressed concerns that because of the economic downturn, the reduction in demand for infrastructure and construction maintenance work has greatly reduced the number of active workers in the plan.

Finally, officials of several plans expressed concerns about attracting and retaining contributing employers. An official of a safe status or "green-zone" plan, for example, said that it is essential that the plan continue to attract new employers and that the ability to do so is a key basis for the plan's overall financial health. An official of a critical status plan that is attempting to forestall insolvency told us that it is very concerned about the financial well-being of its remaining contributing employers and that plan insolvency could be hastened if one of these employers were to fail or otherwise cease making contributions. As PBGC officials and a construction industry organization noted, because the contribution base of multiemployer plans can overlap, financial stress in one plan has the potential to spill over to other plans. If, for example, the burden of increased contributions in one plan causes a large employer economic distress, it may impair its ability to remain competitive as well as make sufficient contributions to other plans. As shown in figure 6, this contagion effect could negatively affect the funded status of other plans.

Figure 6: Illustration of the Manner by Which Financial Distress in Multiemployer Plans May Spread to Other Employers and Plans



Source: GAO analysis of documentation and interviews with representatives of plans, employers, and PBGC.

If the events of coming years are more favorable than the assumptions on which rehabilitation plans are based, some plans may emerge from critical status earlier than planned, and some may be able to avoid insolvency. However, the opposite is true as well—if future events are less favorable than assumed, contributing employers and plan participants may have to make additional sacrifices or additional plans could face insolvency. Our discussions with eight critical status and two endangered status plans show that while some plans believed they had flexibility to make further adjustments, others did not. For example, officials of one plan trying to avoid insolvency said that even the contribution increases included in the funding improvement plan will be

very difficult to bear for employers and workers, and further concessions are not realistic. An official of a large national plan said that the ability of employers and participants to absorb more sacrifices varied considerably among the plan's 900 participating groups, but that in general, additional concessions would be very difficult to accept. They said that it would almost certainly erode the plan's contribution base, which would mean a slow progression towards insolvency.

PBGC Provides Financial Assistance to a Greater Number of Plans Each Year, Endangering the Multiemployer Program and Guaranteed Retiree Benefits

PBGC's financial assistance to multiemployer plans has increased significantly in recent years, and projected plan insolvencies may exhaust PBGC's multiemployer insurance fund. In fact, PBGC expects that, under current law, based on plans currently booked as liabilities (current and future probable plan insolvencies), the multiemployer insurance program is likely to become insolvent within the next 10 to 15 years, although the exact timing is uncertain and depends on key factors, such as investment returns and the timing of individual plan insolvencies. Additionally, PBGC estimates that if the projected insolvencies of either of two large multiemployer plans were to occur, the insurance fund would be completely exhausted within 2 to 3 years. While retirees of insolvent plans generally receive reduced monthly pension payments under the PBGC pension guarantee, this amount would be further reduced to an extremely small fraction of what PBGC guarantees, or nothing, if the multiemployer insurance fund were to be exhausted.

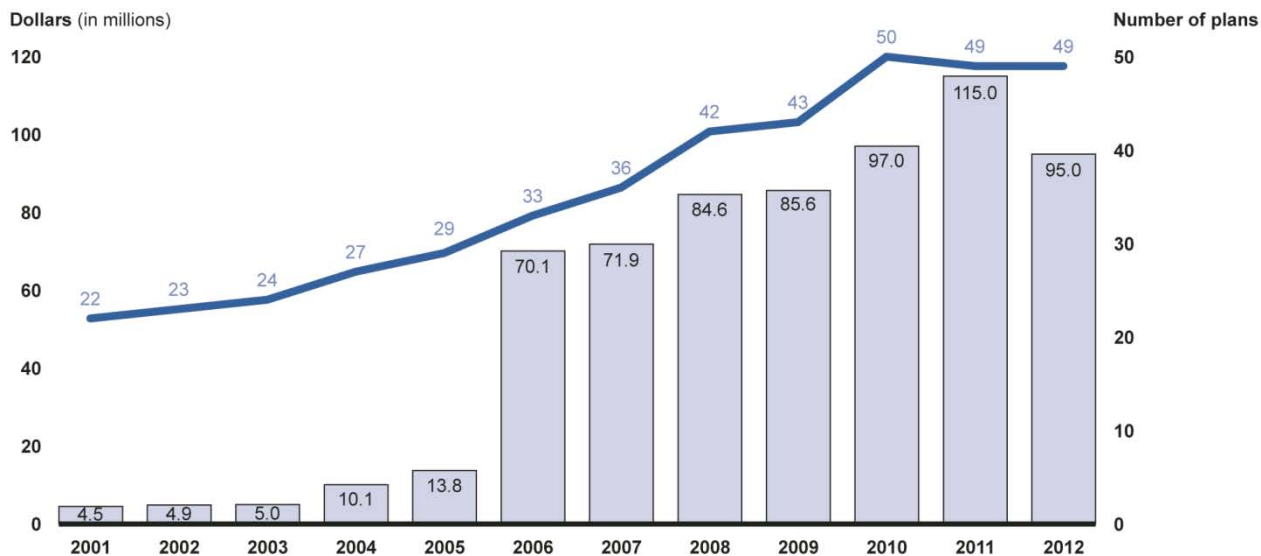
Total PBGC Financial Assistance to Plans Increased More Rapidly in Recent Years, and Current and Projected Plan Insolvencies Will Exhaust the Insurance Fund

Increases in PBGC Loans and Other Financial Assistance

As more multiemployer plans have become insolvent, the total amount of financial assistance PBGC has provided has increased markedly in recent years. Overall, for fiscal year 2012, PBGC provided \$95 million in total financial assistance to help 49 insolvent plans cover pension benefits for about 51,000 plan participants. Generally, since 2001, the number of multiemployer plans needing financial assistance has steadily increased, as has the total amount of assistance PBGC has provided each year, slowing the increase in PBGC's multiemployer insurance program funds.

Moreover, as figure 7 indicates, the number of plans needing PBGC's help has increased significantly in recent years, from 33 plans in fiscal year 2006 to 49 plans in fiscal year 2012. Likewise, the amount of annual PBGC assistance to plans has increased from about \$70.1 million in fiscal year 2006 to about \$95 million in fiscal year 2012 (a decrease in assistance, due to fewer plan closeouts, compared with about \$115 million in fiscal year 2011). From fiscal years 2005 to 2006 alone, annual PBGC assistance increased from about \$13.8 million to more than \$70 million.

Figure 7: Multiemployer Plans Receiving PBGC Financial Assistance and Amounts Received, Fiscal Years 2001 through 2012



Source: GAO analysis of PBGC data.

Loans to insolvent plans comprise the majority of financial assistance that PBGC has provided to multiemployer plans.³¹ As figure 8 illustrates, based on available data from fiscal year 2011, loans to insolvent plans totaled \$85.5 million and accounted for nearly 75 percent of total PBGC

³¹ Under Title IV of ERISA, a plan may be considered insolvent if it does not have enough assets to pay the PBGC-guaranteed benefits for a full plan year. An insolvent plan continues operations, and PBGC provides necessary financial assistance for payment of benefits at statutorily guaranteed levels and for reasonable administrative expenses. The amounts of financial assistance for plan partitions and mergers and closeouts fluctuate from year to year, so the amount of assistance for a particular fiscal year is not an indication of trends or amounts of assistance in prior years.

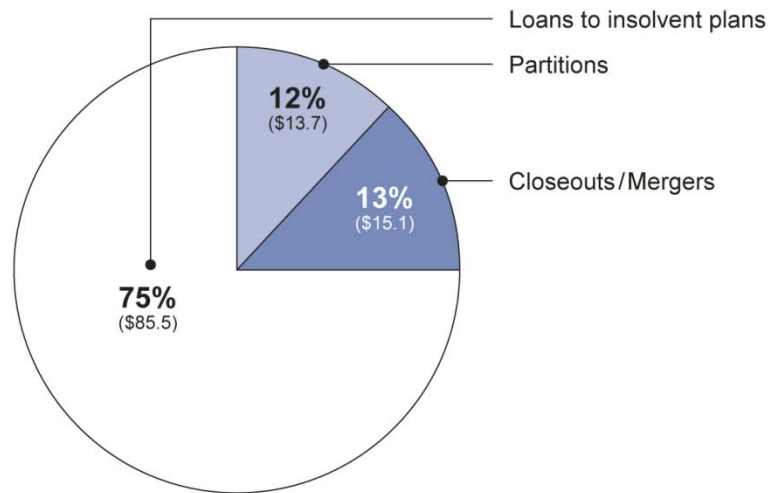
financial assistance. However, the loans are not likely to be repaid because the plans are insolvent. To date, only one plan has ever repaid a PBGC loan. In addition to providing loans to insolvent plans, PBGC provided \$13.7 million in fiscal year 2011 to help support two plan partitions, which enabled those plans to carve out the benefit liabilities attributable to “orphaned” employees whose employers filed for bankruptcy, while keeping the remainders of the plans in operation.³² Once a plan is partitioned, PBGC assumes the liability for paying benefits to the orphaned participants. Additionally, PBGC provided \$15.1 million in fiscal year 2011 to help plan sponsors close out five plans, which occurs when plans either merge with other multiemployer plans or purchase annuities from private-sector insurers for their beneficiaries.³³ Plans considering a merger must provide notice to PBGC and may request a compliance determination; PBGC officials said they carefully consider each merger to ensure that the merger would not result in a weaker combined plan than the separately constituted plans.³⁴

³² A plan partition is a statutory mechanism by which a multiemployer plan can carve out—or partition—the plan liabilities attributable to “orphaned” employees of employers who have filed for bankruptcy. According to PBGC, orphaned participants may also include participants whose employers withdrew from a plan without filing bankruptcy. However, this group of participants would not be eligible for partitioning.

³³ According to PBGC officials, financial assistance to help plans close out is available only in limited circumstances: (1) if a plan’s net PBGC liability is generally under \$5 million, PBGC provides financial assistance to allow the plan to purchase insurance annuities, and (2) if a plan is expected to become insolvent within 10 years, PBGC may provide financial assistance to allow the plan to merge with another plan.

³⁴ A plan merger typically involves a plan with a lower assets-to-liability ratio and a plan with a higher assets-to-liability ratio. According to PBGC, plan closeouts help PBGC reduce plan administrative costs.

Figure 8: PBGC's Financial Assistance to Multiemployer Plans, by Type and Amount, Fiscal Year 2011 (dollars in millions)



Source: GAO analysis of PBGC data.

Potential Future Liabilities for PBGC

PBGC monitors the financial condition of multiemployer plans to identify plans that are at risk of becoming insolvent and that may require its financial assistance from the multiemployer insurance program. Based on this monitoring, PBGC maintains a contingency list of plans that are likely to become insolvent and make a claim to PBGC's multiemployer insurance program. PBGC classifies plans on its contingency list according to the plans' risk of insolvency.³⁵ PBGC also assesses the effect that insolvencies among the plans on the contingency list would have on the multiemployer insurance fund. Table 5 outlines the various classifications and definitions based on risk.

³⁵ To determine which multiemployer plans belong in each of the contingency categories, PBGC uses a screening process that measures the financial health of plans based on a number of variables that include, among others: (1) the ratio of active participants (those for whom employers are continuing to make contributions) to other participants (those for whom plans are making or will soon make benefit payments), (2) the ratio of assets to the present value of vested benefits accrued by participants, and (3) the ratio of contributions to benefit payments.

Table 5: Classifications of Plans on PBGC's Contingency List

(dollar in billions)		
Classification	Definition	FY 2012 Liability ^a
Probable (Current)	A plan that is known to be insolvent and has received or will begin receiving financial assistance from PBGC.	\$1.4
Probable (Terminated Future)	A terminated plan that may still have assets, but current assets and future collectible payments are projected to be insufficient to cover plan benefits plus expenses.	\$1.7
Probable (Ongoing Future)	An ongoing plan with a projected date of insolvency within 10 years.	\$3.9
Reasonably Possible	An ongoing plan with a projected date of insolvency between 10 and 20 years in the future.	\$27.0

Source: PBGC.

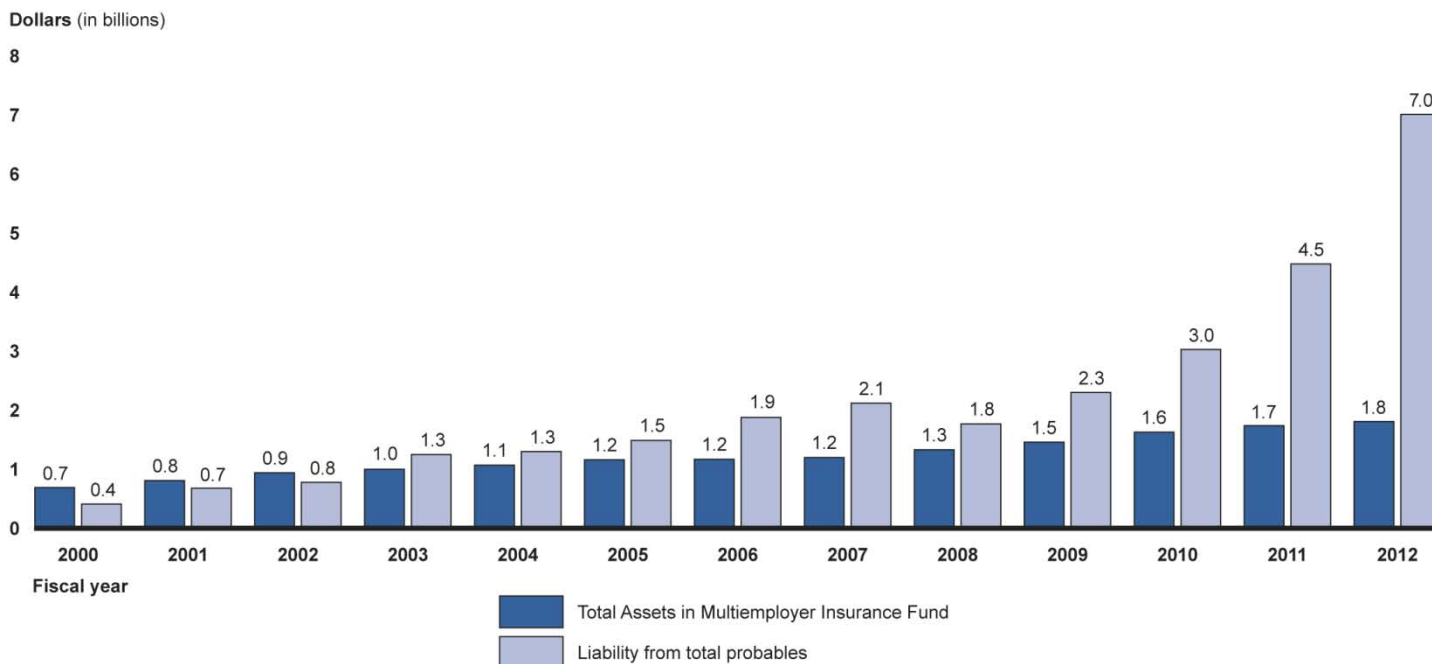
^aLiability represents the present value of PBGC's potential liability to these plans.

Both the number of multiemployer plans placed on PBGC's contingency list and the amount of PBGC's potential financial assistance obligations to those plans have increased steadily over time, with the greatest increases recorded in recent years. According to PBGC data, the number of plans where insolvency is classified as "probable"—plans that are already insolvent or are projected to become insolvent within 10 years—increased from 90 plans in fiscal year 2008 to 148 plans in fiscal year 2012. Similarly, the number of plans where insolvency is classified as "reasonably possible"—plans that are projected to become insolvent 10 to 20 years in the future—increased from 1 in fiscal year 2008 to 13 in fiscal year 2012.

Although the increase in the number of multiemployer plans on PBGC's contingency list has risen sharply, the present value of PBGC's potential liability to those plans has increased by an even greater factor.³⁶ For example, as illustrated in figure 9, the present value of PBGC's liability associated with "probable" plans increased from \$1.8 billion in fiscal year 2008 to \$7.0 billion in fiscal year 2012. By contrast, for fiscal year 2012, PBGC's multiemployer insurance fund only had \$1.8 billion in total assets, resulting in net liability of \$5.2 billion, as reported in PBGC's 2012 annual report.

³⁶ PBGC determines the present value by using certain assumptions about interest rates, among other things, to adjust the amount of future benefit payments to reflect the time value of money (by discounting) and the probability of payment (by means of decrements, such as for death or retirement).

Figure 9: Liability from Probable Multiemployer Plan Insolvencies on PBGC's Contingency List, Fiscal Years 2000 through 2012



Source: GAO analysis of PBGC data.

Although PBGC's cash flow is currently positive—because premiums and investment returns on multiemployer insurance fund assets exceed benefit payments and other assistance—PBGC expects plan insolvencies to more than double by 2017, placing greater demands on the multiemployer insurance fund and further weakening PBGC's overall financial position.³⁷

Potential Exhaustion of Multiemployer Insurance Fund

PBGC expects that the pension liabilities associated with current and future plan insolvencies will exhaust the multiemployer insurance fund. Under one projection using conservative (i.e., somewhat pessimistic) assumptions for budgeting purposes, PBGC officials reported that the agency's projected financial assistance payments for plan insolvencies that have already occurred or are considered probable in the next 10

³⁷ PBGC's primary sources of cash inflow are from insurance premiums paid by multiemployer plans and subsequent investment earnings from those premiums. Cash outflows primarily comprise financial assistance to insolvent and near-insolvent plans.

years would exhaust the multiemployer insurance fund in or about 2023.³⁸ PBGC officials said that the precise timing of program insolvency is difficult to predict due to uncertainty about key assumptions, such as investment returns and the timing of individual plan insolvencies. Based on a range of estimates provided by multiple projections, PBGC officials said the multiemployer insurance program is likely to become insolvent within the next 10 to 15 years. Furthermore, exhaustion of the insurance fund may occur sooner because the financial health of two large multiemployer plans has deteriorated. According to PBGC officials, the two large plans for which insolvency is “reasonably possible,” have projected insolvency 10 to 20 years in the future. PBGC estimates that, for fiscal year 2012, the liability from these two plans accounted for \$26 billion of the \$27 billion in liability of plans in the “reasonably possible” category. Taken in combination, the number of retirees and beneficiaries of these two plans would represent about a six-fold increase in the number of people receiving guarantee payments in 2012. PBGC officials said that the insolvency of either of these two large plans would exhaust the insurance fund in 2 to 3 years.

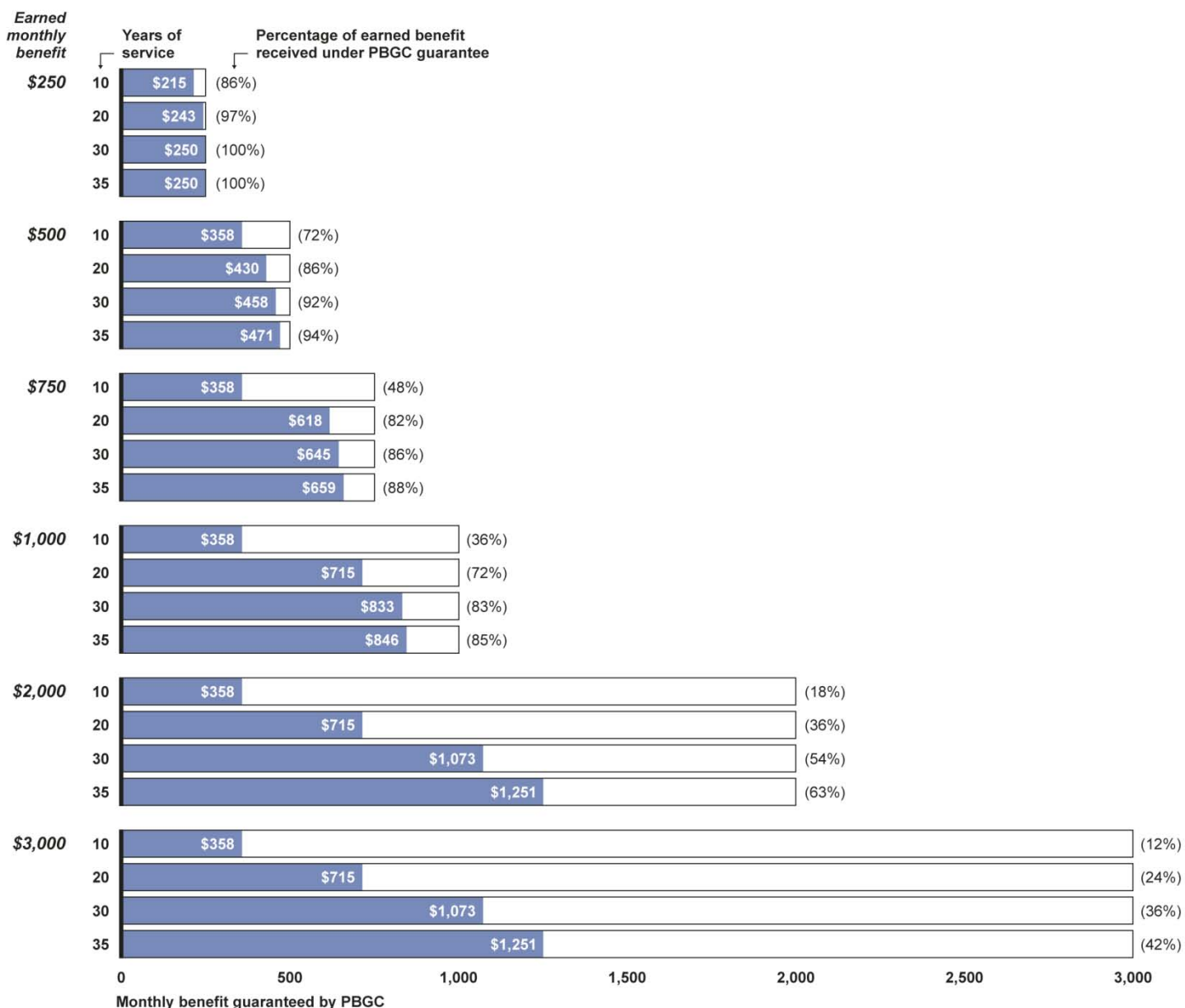
³⁸ PBGC projects potential insolvency dates using varying methodological approaches and assumptions about the future and assuming no changes in law. According to PBGC officials, the 2023 insolvency date is based on a deterministic projection of financial assistance payments for plans booked as liabilities on PBGC’s financial statements as of September 30, 2012, using conservative assumptions, including for rates of return on plan assets and immediate and continued reductions in active participant counts and employer contributions in ongoing plans. PBGC’s FY2012 Exposure Report uses the ME-PIMS stochastic model, which is based on a sample of all plans in the multiemployer universe, including a sample of booked liabilities, and a separate set of assumptions. This model projects a 52 percent chance of program insolvency by 2023, which rises to about 85 percent by 2028. For other purposes, PBGC officials said they use a cash flow projection methodology based on financial assistance payments for all booked plans and for projected future booked plans (using mean values resulting from a stochastic projection). PBGC officials said that no matter which method is used, estimated program insolvency dates are relatively close.

Benefits of Many Retirees Are Reduced under PBGC Guarantees, and May Be Further Reduced If PBGC Multiemployer Insurance Program Becomes Insolvent

Generally, retirees who are participants in insolvent plans receive reduced pension benefits under PBGC's statutory pension guarantee formula. In most cases, PBGC's pension guarantee (see fig. 10) does not offer full coverage of the monthly pension benefits that a retiree of an insolvent plan has actually earned. When a multiemployer plan becomes insolvent and relies on PBGC loans to pay for benefit payments to plan retirees, retirees will most likely see a reduction in their monthly pension benefits.³⁹ PBGC uses a formula that calculates the maximum PBGC benefit guarantee based on the amount of a plan participant's pension benefit accrual rate and years of credit service earned. For example, if a retiree has earned 30 years of credit service, the maximum coverage under the PBGC guarantee is about \$1,073 per month, which yields an annual pension benefit of \$12,870.

³⁹ The guaranteed benefit amount is a function of the participant's accrual rate, and is calculated as the participant's monthly benefit amount divided by his or her years of service. PBGC's multiemployer program guarantees 100 percent of the first \$11 per month per year of service plus 75 percent of the next \$33, or \$35.75 maximum per month per year of service. 29 U.S.C. § 1322a(c).

Figure 10: Hypothetical Illustration of Guaranteed Benefit Levels under PBGC's Multiemployer Insurance Program



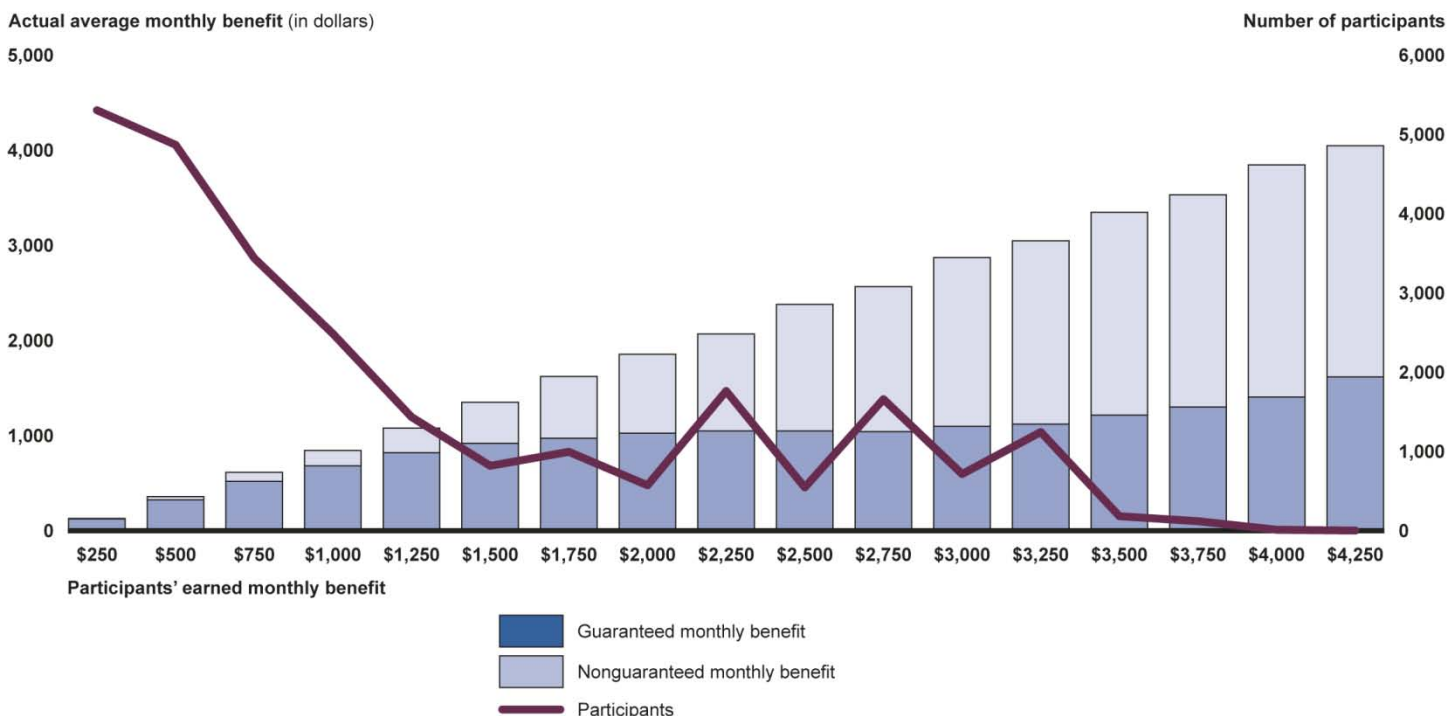
Source: GAO analysis of PBGC data.

Note: Although the PBGC maximum monthly benefit based on a 30-year working career is about \$1,073, as this chart shows, a greater benefit can be earned if a worker retires after a longer career.

Generally, retirees receiving the highest pensions experience the steepest cuts when their plans become insolvent and their benefits are limited by the pension guarantees. According to PBGC, in 2009, the average monthly pension benefit received by retirees in all multiemployer plans was \$821.⁴⁰ However, as shown by PBGC in a hypothetical illustration of benefit distributions (see fig. 11), the line that spans the bar chart indicates that the range of pension benefits varies widely across retirees, and, with \$692 as the median pension, about half of the plan's retirees will experience 15 percent or greater reductions in their pensions under the PBGC guarantee. Additionally, under this illustration, one out of five retirees will experience 50 percent or greater reductions in their pensions under the PBGC guarantee. Ultimately, regardless of how long a retiree has worked and the amount of monthly benefits earned, any reduction in pension benefits—no matter the amount—may have significant effects on retirees' living standards.

⁴⁰ The average monthly benefit was determined by dividing benefits paid under all plans by the number of retired participants under all plans. However, the average is somewhat inflated because benefits paid during the year include lump-sum payments (mostly \$5,000 or less). Additionally, the average monthly benefit received in 2009 is slightly higher for plans in the transportation industry (\$1,120), where an annual benefit can reach \$30,000 or more for a plan participant with 30 years of service. On the other hand, the average monthly benefit is lower (\$642) for plans in the retail trade and service industries.

Figure 11: Hypothetical Illustration of the Effects of Guaranteed Monthly Pension Benefit Levels under PBGC's Multiemployer Insurance Program



Source: GAO analysis of PBGC data.

Note: According to PBGC, the figure provides a comparison of the relative frequency of different benefit levels to the portion of the benefit that is covered by the PBGC multiemployer program guarantee. The figure summarizes information on participants already retired under a large hypothetical multiemployer plan that has relatively generous benefits. Benefit amounts are represented by the bars while the number of participants receiving benefit amounts in a given grouping is indicated by the purple line. The height of each bar is the average benefit amount in the grouping. The bottom half of each bar indicates the portion of pensions guaranteed by PBGC, and the top half of each bar indicates the portion of pensions not guaranteed by PBGC.

According to PBGC, in the event that the multiemployer insurance fund is exhausted, affected participants then relying on the PBGC pension guarantee would receive an extremely small fraction of their already-reduced guarantees or, potentially, nothing. According to PBGC officials, once the insurance fund's cash balance is depleted, the agency would have to rely solely on the annual insurance premium receipts, which totaled \$92 million for fiscal year 2012. The precise effect that the insolvency of the multiemployer insurance fund would have on retirees receiving the PBGC guaranteed benefit depends on a number of factors—primarily the number of guaranteed benefit recipients and PBGC's annual premium income at that time. The impact would,





however, likely be severe. For example, if the insurance fund were to be drained by the insolvency of one very large and troubled plan, under one scenario, we estimate that the benefits paid by PBGC would be reduced to less than 10 percent of the PBGC guarantee level. In this scenario, a retiree who once received a monthly pension of \$2,000 and whose pension was reduced to \$1,251 under the PBGC guarantee, would see the monthly pension income further reduced to less than \$125, or less than \$1,500 per year. Additional plan insolvencies would further depress already drastically reduced income levels. Our contacts with plan officials and other stakeholders also suggested that the exhaustion of the PBGC multiemployer insurance fund would have effects well beyond direct financial impacts. For example, officials of another plan said that the exhaustion of the insurance fund could bring about the loss of public confidence in the multiemployer plan system's ability to provide retirement security for plan participants and their beneficiaries.

Key Options to Reduce Liabilities and Change Plan Designs Could Help Improve Financial Stability, but Pose Trade-offs

Experts and stakeholders we interviewed cited two key policy options to avoid the insolvencies of severely underfunded plans and the PBGC multiemployer insurance fund, and a number of other options for longer term reform of the multiemployer system (see fig. 12). To address the impending insolvency crisis, they proposed allowing severely troubled plans to reduce accrued benefits, including benefits of retirees, and providing PBGC with additional resources to prevent insolvencies that might otherwise threaten the fund. Longer term options would provide plans with flexibilities and resources to help attain financial stability in the future. These include encouraging the adoption of flexible benefit designs and reforming withdrawal liability policies.⁴¹

⁴¹ The NCCMP's February 2013 report also offered a series of recommendations that address some of the proposals discussed in this section. In addition, it also includes a series of recommended technical refinements to the PPA that were beyond the scope of this report. For example, the report advocates that plans that reasonably expect to enter critical status in the next five plan years be permitted to enter critical status in the current plan year.

Figure 12: Key Federal Policy Options and Possible Effects on Key Stakeholders

Steps to address impending insolvencies of severely underfunded plans				
	Employers	Active participants	Retirees	Federal government
Allow plans to reduce accrued benefits	 <ul style="list-style-type: none"> ■ May alleviate need for further contribution increases 	 <ul style="list-style-type: none"> ■ Accrued benefits may be reduced ■ May alleviate need for further reductions in accrual rate 	 <ul style="list-style-type: none"> ■ Accrued benefits may be reduced 	 <ul style="list-style-type: none"> No direct effect^a
Financial assistance	<ul style="list-style-type: none"> ■ May alleviate need for further contribution increases; plan costs may rise if assistance is funded through an increase in premiums 	<ul style="list-style-type: none"> ■ May alleviate need for further reductions in accrual rate 	<ul style="list-style-type: none"> ■ Possibly offset significant reductions in accrued benefits 	<ul style="list-style-type: none"> ■ Costs of financing partitions or other financial assistance; costs would be reduced to the extent that the assistance is funded through an increase in premiums
Steps to help improve long-term financial stability				
Flexible benefit plan design	<ul style="list-style-type: none"> ■ May stabilize the amount of employer contributions 	<ul style="list-style-type: none"> ■ May entail some marginal adjustments in benefit accruals 	<ul style="list-style-type: none"> ■ May entail some marginal adjustments in benefits for future retirees 	<ul style="list-style-type: none"> No direct effect^a
Changes to withdrawal liability policy	<ul style="list-style-type: none"> ■ Impact varies for various changes suggested 	<ul style="list-style-type: none"> ■ Impact varies for various changes suggested 	<ul style="list-style-type: none"> ■ Impact varies for various changes suggested 	<ul style="list-style-type: none"> No direct effect^a
Promotion of mergers and alliances	<ul style="list-style-type: none"> ■ Could lower costs and should help alleviate need for further contribution increases 	<ul style="list-style-type: none"> ■ May alleviate need for further reductions in accrual rate 	<ul style="list-style-type: none"> No direct effect^a 	<ul style="list-style-type: none"> ■ Cost of PBGC financial assistance may be partially offset by helping plans avoid insolvency

Reason groups/entities bear the majority of impact from that policy option

Source: GAO analysis of documentation and interviews with experts and stakeholders.

^aWe recognize there may also be secondary effects from these policy options. For example, reducing accrued benefits may result in a greater use of and reliance on Medicaid and other federal benefits. An indirect effect of some of these policy options could be to reduce PBGC's exposure to potential liabilities.

Allowing Plans to Reduce Accrued Benefits Could Help Severely Underfunded Plans Avert Insolvency, but Some Experts Said Severity of Cuts May Warrant Federal Assistance

Allow Plans Facing Insolvency to Reduce Accrued Benefits

Various experts and plan representatives stressed the necessity of modifying ERISA's anti-cutback rule to allow severely distressed plans to reduce the accrued benefits of active participants as well as retirees.⁴² They noted that this flexibility is essential because 1) the most severely distressed plans will be unable to avoid insolvency using traditional methods—increasing employer contributions and/or reducing future benefit accruals or adjustable benefits—and 2) benefit reductions will occur in any case and will be more severe in the event of plan insolvency, especially in the event of the insolvency of PBGC's multiemployer insurance fund. As described in the first section of this report, the most severely distressed plans we contacted have already adjusted contributions and benefits and several stated that further adjustments would accelerate plan insolvency. In particular, the demographics of many multiemployer plans limit their ability to reduce liabilities through contribution increases or reductions in future benefit accruals because they are typically based on hours worked. For example, the majority of participants in one of the largest multiemployer plans have already retired or are inactive and no longer contributing to the plan—as of 2012, the plan had about 4.86 retired or otherwise inactive participants for every active worker. In light of the sacrifices already made by active participants—some of whom are absorbing the cost of significant contributions to support benefit payments at a level they will likely never see for themselves—some stakeholders noted that adjustments of retiree benefits would be equitable. Moreover, experts, as well as employer and plan representatives also noted that allowing plans to reduce accrued benefits now could avoid more severe reductions in the future. For example, representatives from an association of actuaries and from a

⁴² 26 U.S.C. § 411(d)(6) and 29 U.S.C. § 1054(g).

large plan noted that for some plans, the alternative to reductions in accrued benefits is eventual plan insolvency, which would result in the much lower benefit level guaranteed by PBGC compared to the current benefits paid and, possibly, little to no benefit at all if PBGC's multiemployer insurance fund became insolvent. Finally, some experts and a plan representative stressed the urgency of obtaining such flexibility because the longer the delay, the greater the eventual required benefit reductions.

Nonetheless, allowing plans the flexibility to reduce accrued benefits for current workers and retirees would significantly compromise one of the founding principles of ERISA and could impose significant hardship on some retirees. While some plan representatives and other stakeholders told us that a very modest benefit reduction would be sufficient to avoid insolvency, others noted that reductions would be very painful for retirees who worked for many years and planned their retirements around a promised benefit.⁴³ Representatives of one of these plans referred to appeal letters to the plan that had been submitted by participants and/or their spouses, noting that older workers or retirees can be in some financially difficult situations, and cuts to accrued benefits would deepen and increase the number of such hardships. Some also noted that while younger retirees may be able to obtain employment to supplement income, older retirees, especially in physically demanding industries like mining and construction would likely not have that option. Finally, some stakeholders indicated that the flexibility to reduce accrued benefits would harm the multiemployer system by undermining the credibility of multiemployer plans and diminishing their ability to attract and retain employers and participants.

Plan representatives and experts we contacted proposed a number of considerations and limitations that could mitigate some concerns with allowing plans to reduce accrued benefits. As described in table 6, these measures include eligibility criteria and options for oversight, along with other key features. For example, given the sacrifice it would impose on

⁴³ For example, several stakeholders told us some plans could avoid insolvency by eliminating an additional monthly benefit payment known as a "13th check." According to representatives from one plan, these additional benefits were added during the strong equities market of the 1990s in order to avoid additional tax liabilities due to overfunding and, to the extent the additional benefits are part of the accrued benefit, the plan does not have the flexibility to rescind this benefit under current law.

participants, several experts and plan representatives said that allowing reductions in accrued benefits should only be considered as a last resort for plans headed for insolvency.

Table 6: Key Features of Proposals to Allow Severely Underfunded Plans to Reduce Accrued Benefits

	NCCMP Commission proposals	Plan representatives and industry experts proposals
Eligibility criteria	<ul style="list-style-type: none">Actuarial determination would be needed to show that benefit reductions avert plan insolvency.	<ul style="list-style-type: none">Plans should demonstrate the financial necessity of benefit reductions, e.g., certification that plan is headed for insolvency or a cash flow test.
Nature and extent of reductions	<ul style="list-style-type: none">Accrued benefits may be reduced at most to 110% of the PBGC guarantee.	<ul style="list-style-type: none">Reductions in accrued benefits should be limited to a level tied to the PBGC guarantee (suggested level varied from 100% to 125% of the PBGC guarantee).
Implementation	<ul style="list-style-type: none">Benefit reductions would be determined by plan trustees in concert with the collective bargaining process.Any future benefit increases would be accompanied by a comparable restoration of accrued benefits that were reduced.	<ul style="list-style-type: none">Plan trustees are best placed to decide how benefit cuts should be implemented.Protections for vulnerable populations should be considered (e.g., oldest or disabled participants, those with lower benefits).
Oversight	<ul style="list-style-type: none">PBGC could review proposed cuts to ensure established criteria are met (e.g., benefit reductions are equitably distributed and protections are in place for most vulnerable populations).	<ul style="list-style-type: none">PBGC, Labor, or IRS could perform oversight.

Source: GAO analysis of interviews and documentation from NCCMP and interviews with plan representatives and industry experts. In addition to the NCCMP effort, a representative from an employer in the transportation industry said they are working with other employers in that industry to develop a proposal to address multiemployer plan funding challenges, but it was still in progress at the time this report was written.

Even with these protections and considerations, the flexibility to reduce accrued benefits would not occur without considerable sacrifice, and may not be sufficient to help some plans avoid insolvency. Several plan representatives and experts said the suggested benchmark for reducing accrued benefits—PBGC’s guarantee level of \$12,870 on an annual basis for 30 years of service—is relatively low and could result in steep benefit cuts. For example, given the magnitude of financial challenges facing some severely underfunded plans, accrued benefits may be reduced by one-third or more of their original value. Moreover, in the case of at least one plan, PBGC officials said that reductions to the maximum guaranteed level may still not represent sufficient savings to avert insolvency. For example, representatives of one large plan told us that while reducing accrued benefits might be an option for some plans, it was not an option for their plan because the benefits were already quite modest—average retirement benefits in 2010 were about \$600 per month. Further, plan

Financial Assistance to Prevent Insolvency

representatives said it would be unconscionable to reduce benefits for a retiree with a work-related illness, such as a respiratory ailment, who may be barely surviving on current benefit levels.

According to several experts, in an effort to save plans and conserve PBGC assets in the long term, PBGC could provide financial assistance to qualifying plans headed for insolvency through a partition. If a plan qualifies and its application is approved by PBGC, the partition population includes only orphaned participants—those whose employer left the plan due to bankruptcy—and their benefits are reduced to the guaranteed level.⁴⁴ According to industry experts, partitions would allow plans with a substantial share of orphaned liabilities to avoid further benefit reductions for active participants and other beneficiaries. By removing the burden of the legacy costs associated with orphaned participants, the plan would be in a better position to adequately fund benefit obligations with ongoing contributions. In addition, one expert said that partitions could reduce the total liability for PBGC because extending the solvency of the plan means that fewer participants would rely on benefit payments from the PBGC than if the whole plan were to become insolvent.

While partitions may prevent qualifying plans from becoming insolvent, neither PBGC's current partitioning authority nor its financial resources are sufficient to address the impending insolvency of large, severely underfunded plans. In its entire history, PBGC has performed partitions for only two plans.⁴⁵ According to PBGC officials, plan representatives, and experts, there are a number of reasons why partitions have not been more widely used:

⁴⁴ 29 U.S.C. § 1413 specifies the following criteria a plan must meet to qualify for a partition: 1) a substantial reduction in the amount of aggregate contributions under the plan has resulted or will result from a case or proceeding under title 11 United States Code (Bankruptcy) with respect to an employer, 2) plan is likely to become insolvent, 3) contributions will have to be increased significantly in reorganization to meet the minimum contribution requirement and prevent insolvency, and 4) partition would significantly reduce the likelihood that the plan will become insolvent.

⁴⁵ In addition to an earlier partition of the Council 30 of the Retail, Wholesale, and Department Stores Union plan, PBGC partitioned the Chicago Truck Drivers Union Pension Plan in 2010. In each case, rather than administering the plan directly, PBGC provides sufficient funding to the plan to pay the orphaned beneficiaries guaranteed benefits, along with relevant administrative expenses.

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- The magnitude of potential reductions for orphaned participants has dissuaded some plans from applying for help. Payments for the partitioned population will be reduced to the PBGC guarantee level, which could be a sizable reduction in some cases.
 - PBGC does not have sufficient resources to cover orphaned liabilities of large severely underfunded plans.
 - Plans may not meet the four statutory criteria to be eligible for a partition. For example, a plan must demonstrate that it is headed for insolvency due to a reduction in contributions due to employer bankruptcies, which numerous plan representatives and experts said may exclude plans in need of assistance. Some plan representatives said that many of their contributing employers are small businesses that do not have the wherewithal to go through formal bankruptcy proceedings, but instead close without paying their full share of liabilities. In other cases, contributing employers may have left when the plan was adequately funded, but, as a result of the market crash in 2008, the funded status deteriorated. Consequently, the plan is not able to collect any ongoing contributions from those employers to offset the poor investment returns, but the plan is still responsible for paying the full amount of vested benefits for their workers.

While the reasons employers leave a plan may vary, their departure can result in significant legacy costs that experts said impair the ability of the plan to remain solvent or recover from funding shortfalls. For example, according to officials from one of the largest plans, about 40 percent of benefit payments go to orphaned participants and current employer contributions amounted to only about 25 percent of total annual benefit payments as of 2009. To address this issue, several experts said that partitions should be made more widely available so that, for example, orphaned liabilities could include any participants whose contributing employer left the plan without paying their full share of unfunded vested benefits. However, to cover the cost of these benefits, several experts noted that PBGC would need additional funding—the agency does not have nearly sufficient resources to pay even the reduced benefit levels for potential partition populations from some large plans.

As an example, representatives of one of the largest plans for which insolvency is reasonably possible in the mining industry indicated they may not be eligible for assistance through a partition because the plan was sufficiently funded until the 2008 financial crisis. In the absence of a

partition, some members of Congress have proposed financial assistance using an existing separate source of funds established from reclamation fees paid by coal companies for abandoned coal mines.⁴⁶ According to plan representatives, this fund currently provides money to pay for health benefits of three related plans, which have not used the full amount of those funds. The proposal would transfer any remaining funds that are not needed for health benefits to improve the solvency of the pension plan.⁴⁷ The representatives also noted that this financial assistance is essential and the only way the plan can avoid insolvency. Pension benefits for this plan are relatively low—retirees received an average pension of about \$600 a month in 2010, which limits the plan’s ability to improve its funded status even if reductions to accrued benefits were allowed.

Numerous industry experts and plan representatives emphasized the importance of providing timely assistance to severely underfunded plans, but some experts also cited drawbacks of providing additional financial assistance beyond PBGC’s multiemployer insurance fund. Regarding advantages, several experts and plan representatives said providing additional financial assistance sooner rather than later could prevent entire plans from going insolvent and reduce the number of participants relying on guaranteed payments from PBGC in the long term. Beyond the scope of an individual plan, representatives from a construction industry group said additional financial assistance could also prevent more widespread negative effects. Because employers across various industries contribute to some of the large severely underfunded multiemployer plans, as well as other plans, the continued decline of such a plan could trigger a contagion effect. Contributing employers may face large liabilities (e.g., increased contributions, increased withdrawal liability) that could prevent them from fulfilling obligations to other currently well-funded plans and some employers may be forced out of

⁴⁶ H.R. 5479, 111th Cong. (2010). Other sources of federal assistance may also be considered. For example, prior proposed legislation included a provision for diverting funds from PBGC’s single-employer program to provide assistance to multiemployer plans. S. 3157, 111th Cong. (2010). However, as we have previously reported, PBGC’s single-employer program also faces significant long run financial challenges and the program has been on GAO’s high risk list since 2003. See GAO, *High-Risk Series: An Update*, [GAO-11-278](#) (Washington, D.C.: February 2011), 150-153 and *Pension Benefit Guaranty Corporation: Single-Employer Pension Insurance Program Faces Significant Long-Term Risks*, [GAO-04-90](#) (Washington, D.C.: October 29, 2003).

⁴⁷ Coal Accountability and Retired Employee Act of 2010 (CARE Act), H.R. 5479.

business. Moreover, a plan representative and an expert said additional financial assistance is necessary to prevent the insolvency of the multiemployer insurance program, which, as described in the previous section, would leave thousands of participants with a small fraction of their vested pension benefits. However, other experts cited drawbacks for providing additional financial assistance. In particular, some experts said that a partition may not be a permanent fix for the plan. For example, if the on-going portion of the plan continues to lose employers, it may still become insolvent and require financial assistance from PBGC. In addition, some experts expressed concern about the size of the burden federal financial assistance could potentially place on taxpayers.⁴⁸

Considering the resources that may be needed to provide financial assistance to troubled plans, PBGC and others have identified increased premiums as a potential source of additional revenue for PBGC.⁴⁹ According to projections in a recent PBGC report, doubling the insurance premium from the current level of \$12 per participant to \$24 per participant would reduce the likelihood of PBGC insurance fund insolvency in 2022 from about 37 percent to about 22 percent.⁵⁰ The analysis also found that a tenfold increase to \$120 per participant would virtually eliminate the likelihood of multiemployer insurance fund insolvency by 2022, although the analysis did not look beyond that timeframe.⁵¹

⁴⁸ For example, according to representatives from one large severely underfunded plan, total vested benefits attributable to participants whose employer left the plan without paying their full share of withdrawal liability was \$2.7 billion as of 2009. The plan's total vested benefits amounted to \$6.7 billion in 2009.

⁴⁹ While this report was submitted for agency comments, the House Subcommittee on Health, Employment, Labor and Pensions held a hearing on challenges facing multiemployer plans on March 5, 2013 where the issue of further raising premiums was discussed. Starting in 2013, premiums paid by multiemployer plans increased from \$9 per participant to \$12 per participant and are indexed thereafter. Premiums for multiemployer plans are considerably lower than for single-employer plans commensurate with the lower benefit guarantee for multiemployer plans. In addition, unlike with single-employer plans, contributing employers in multiemployer plans act as the principal guarantor while PBGC is the guarantor of last resort.

⁵⁰ *PBGC Insurance of Multiemployer Pension Plans: Report to Congress Required by the Employee Retirement Income Security Act of 1974, as amended*, Pension Benefit Guaranty Corporation, Washington D.C., January 2013.

⁵¹ In their report, PBGC neither proposed nor recommended the adoption of increased premiums for the multiemployer program.

However, some stakeholders we spoke with noted that increased premiums also have limitations and drawbacks. Some stakeholders said further premium increases alone were not a feasible solution because they would be insufficient to solve PBGC's long-term funding shortfall and would further stress employers in severely underfunded plans who have already borne considerable contribution increases. According to a PBGC analysis, even a ten-fold increase in the current premium would not prevent significant growth in the agency's deficit. Under this analysis, PBGC estimates that the FY2012 deficit of \$5.2 billion would still nearly triple, amounting to about \$15 billion in 2022. Moreover, it is unclear what impact such premium increases would have on plans of varying financial health, especially plans seeking to delay eventual insolvency. PBGC officials acknowledged that, although premiums are generally not a significant percentage of plan costs, the most severely underfunded plans may not be able to afford any increases. PBGC officials also said that, given the range of financial circumstances across plans, a premium structure that would ensure affordable and appropriate premiums for all plans could help address this concern. In prior work, we assessed changing the premium structure for PBGC's single-employer program to allow premiums to vary based on risk.⁵² However, we have not assessed the implications or implementation of increased premiums or a risk-based premium structure for PBGC's multiemployer program. Given the distinctive features of the multiemployer plan design and program described earlier in this report, the development of a risk-based premium structure for multiemployer plans would entail unique considerations and require further analysis.

⁵² In 2012, we reported on challenges facing PBGC's single-employer program and its premium structure and recommended that Congress consider authorizing a redesign of PBGC's premium structure to more fully reflect the risk posed by plans and sponsors to the agency. For more information, see: GAO, *Pension Benefit Guaranty Corporation: Redesigned Premium Structure Could Better Align Rates with Risk from Plan Sponsors*, [GAO-13-58](#) (Washington, D.C.: November 2012).

Changes to Plan Design and Other Options Could Address Challenges of Withdrawal Liability and Improve Long-Term Financial Stability

Addressing the Problems Associated with Withdrawal Liability Policies

ERISA requires that employers wishing to withdraw from a multiemployer plan pay for their share of the plan's unfunded liabilities. As explained in the following text box, this requirement for withdrawal liability payments is intended to prevent employers from walking away from liabilities they have created, and, thus, help protect plan participants and other employers. However, despite the necessity of such a safeguard, plan representatives and other industry experts said changes are needed to address key challenges related to current provisions regarding withdrawal liability.

Withdrawal Liability

In the event an employer seeks to leave a multiemployer plan and the plan has a funding shortfall, the employer is liable for its share of unfunded plan benefits, known as withdrawal liability. A plan can choose from several formulas established in the law for determining the amount of unfunded vested benefits allocable to a withdrawing employer and the employer's share of that liability.^a Under three of these formulas, the employer's proportional share is based on the employer's share of contributions over a specified period.^b In addition, the plan can apply for approval from PBGC to use variations on these methods. Liabilities that cannot be collected from a withdrawing employer, for example, one in bankruptcy, are to be "rolled over" and eventually funded by the plan's remaining employers—frequently referred to as orphaned liabilities. As we previously reported, this means that an employer's pension liabilities can become a function of the financial health of other employer plan sponsors.^c These additional sources of potential liability can be difficult to predict, increasing employers' level of uncertainty and risk. However, while the total amount of withdrawal liability is based on the unfunded vested benefits for the plan as a whole, a particular employer's annual payments are strictly based on its own contributions and are generally subject to a 20-year cap.^d

Source: GAO analysis of ERISA and PBGC documents and prior GAO reports.

^a Vested benefits are nonforfeitable benefits for which the participant has satisfied the conditions of entitlement. Unfunded vested benefits are the difference between the present value of a plan's vested benefits and the value of plan assets, based on reasonable actuarial methods and assumptions selected by the plan. (In the case of a mass withdrawal, PBGC specifies the methods and assumptions to be used.)

^b Under a fourth method, an employer's withdrawal liability is based on the benefits and assets attributable to service with the employer (and a proportional share of unattributable amounts).

^c [GAO-04-423](#), p. 23.

^d In cases of a mass withdrawal whereby the plan is terminated when all remaining employers exit the plan, the 20-year cap is eliminated.

Current federal withdrawal liability policies give rise to three main problems, according to stakeholders and experts. First, plans often collect far less than the full value of liabilities owed to the plan. In the event of an employer bankruptcy, several experts said plan sponsors often collect little or no withdrawal liability payments. For example, several experts explained that in the recent Hostess Brands bankruptcy, the firm—a contributing employer to many plans—is likely to pay very little of its withdrawal liability obligations. One service provider said this bankruptcy doubled the unfunded liabilities attributable to remaining employers in some plans. Separately, the method of calculating withdrawal liability payments may not capture an employer’s full share of unfunded liabilities because a plan’s withdrawal liability obligation is based on its prior contributions rather than on attributed liabilities, and is also subject to a 20-year cap.⁵³ In particular, some stakeholders said the 20-year cap on withdrawal liability payments limits the amount of money collected by plans. If the amount of the employer’s prior contributions is small relative to the size of their total withdrawal liability, the annual payments may not be sufficient to pay off their total withdrawal liability over the 20-year period.

Second, existing withdrawal liability rules deter new employers from joining a plan with existing unfunded liabilities. Plan representatives said attracting new employers is essential to the long-term health of the plan, but an employer group said the existence of potential withdrawal liability strongly deters prospective employers who may otherwise want to join. Moreover, fear of greater withdrawal liability in the future may encourage current contributing employers to leave the plan. For example, in late 2007, UPS paid about \$6 billion to withdraw from one of the largest multiemployer plans.

Third, the presence of withdrawal liability can negatively affect an employer’s credit rating and ability to obtain loans for their business. For example, representatives from one large employer said their total withdrawal liability exceeds the net worth of their company and this has made it difficult for them to obtain loans and other financing, which might

⁵³ Except in cases of a mass withdrawal, withdrawal liability payments are subject to a 20-year cap. Thus, even if the annual payments made, which are based on the employer’s previous contribution level, for the 20-year period are insufficient to cover the cost of the employer’s withdrawal liability, they are not obligated to pay the remainder of the amount of unfunded vested benefits.

help revitalize their business. Table 7 describes options to address these problems identified through our contacts with various stakeholders, including plan and employer representatives.

Table 7: Options to Address Challenges Associated with Withdrawal Liability

Option	Benefits	Tradeoffs / Limits on Effectiveness
Increase assets recovered by plan		
Improve status of plan in bankruptcy proceedings	Plan would be better positioned to collect a higher share of the liabilities owed by the bankrupt employer	Amount of withdrawal liability collected may still be far short of total unfunded liabilities
Eliminate 20-year cap on withdrawal liability payments	Plan may be able to collect a greater share of liabilities owed by a withdrawing employer	<ul style="list-style-type: none"> Unclear how many employers would be able to continue making payments beyond 20 years Increased amount of withdrawal liability a plan can collect may also deter employers from joining the plan
Reduce deterrent effect on contributing employers		
Exclude increased contributions required by funding improvement or rehabilitation plans from withdrawal liability calculations	Plan may improve its funded status by eliminating a disincentive for employers to increase contributions	Plan sacrifices the amount of withdrawal liability it can collect
Clarify that withdrawal liability will not be assessed to employers that voluntarily remain in the plans	<ul style="list-style-type: none"> Mitigate impact of potential withdrawal liability on employer's credit rating and ability to obtain loans Encourage employers to remain in the plan 	Because this is a clarification of current law, no tradeoffs were identified
Design and manage plan to minimize or eliminate withdrawal liability	Without withdrawal liability, a plan will be better able to attract new employers and expand its contribution base	<ul style="list-style-type: none"> Plan may need to lower benefit accrual rate and/or increase contributions to ensure plan is adequately funded, such as with a flexible benefit design (see next section) Does not address legacy costs so this strategy may only help plans prospectively
Protect newly joining employers by placing them in a separate "pool" in which they only accrue liability prospectively, and do not assume liabilities of existing employers; employers from the "old" pool may move to the new pool if they pay withdrawal liability	<ul style="list-style-type: none"> Permissible under current law Tool for plan to encourage new employers to join the plan and healthy employers to continue to participate Withdrawal liability payments to move to the new pool increases plan assets 	<ul style="list-style-type: none"> Some employers may not be able to afford paying withdrawal liability to move to the new pool Employers in the new pool could still be faced with unfunded liabilities from the old pool in the event of a mass withdrawal

Source: GAO analysis of documentation and interviews with plan representatives, industry experts, and NCCMP.

A comprehensive remedy to the problems arising from withdrawal liability is particularly elusive because a solution to one issue can exacerbate another. For example, eliminating the current 20-year cap may help allow plans to collect withdrawal liability payments until the full amount has

been paid. However, increasing the amount of withdrawal liability that plans can collect may also discourage new employers from participating in a plan because it increases the potential withdrawal liability they could be required to pay. On the other hand, options that could reduce the deterrent effect on new employers—such as the proposal to omit contributions required by funding improvement or rehabilitation plans from withdrawal liability calculations—could reduce a plan’s ability to collect sufficient withdrawal liability.

Facilitate Adoption of Flexible Defined Benefit Plan Design

Numerous plan representatives, experts, and the NCCMP Commission recommend the adoption of a more flexible DB model to avoid a repetition of the current challenges facing multiemployer plans. While the specific plan design can vary, in general, this model allows trustees to adjust benefits based on key factors—such as the plan’s funded status, investment returns, or plan demographics—to keep the plan well-funded. Importantly, it reduces the risk that contributing employers would face contribution increases if the plan experiences poor investment returns or other adverse events. Investment risk is thus primarily shared by participants and the plan is designed to avoid incurring any withdrawal liability. Overall, the trustees of the plan would have greater flexibility than under a traditional DB plan to adjust benefits to keep the plan well-funded. See table 8 for a comparison of two alternative flexible DB plan designs, although other models could also be used. In addition, the NCCMP Commission’s proposal would also give more flexibility for traditional DB plans by allowing these plans to adjust the normal retirement age to harmonize with Social Security’s normal retirement age.⁵⁴

⁵⁴ NCCMP’s proposal would allow plans this flexibility subject to limitations. For example, increases in a plan’s normal retirement age would not apply to current retirees or participants who are within 10 years of the existing normal retirement age.

Table 8: Options for a Flexible DB Plan to Address Risks Facing Multiemployer Plans

Flexible DB option	Key features
Cheiron Variable DB model	<ul style="list-style-type: none"> Benefit at retirement is the greater of the: <ol style="list-style-type: none"> 1) floor defined benefit (e.g., career average pay formula based on an assumed rate of return of 5%) or 2) variable benefit accrued when investment returns exceed floor rate (e.g., greater than 5%) Returns in excess of a cap (e.g., 10%) are used to establish a contingency reserve to mitigate effect of market downturns on the plan's funded status Plan uses a relatively conservative investment strategy in line with floor rate of return At retirement, the greater of the two benefits for a participant is converted into an annuity, which is purchased from a private insurer or managed by the plan using a conservative investment strategy Contingency reserve fund and conservative investment strategy designed to minimize risk of withdrawal liability
NCCMP Target Benefit model ^a	<ul style="list-style-type: none"> Contributions are designed to attain a certain benefit level based on various assumptions, including investment rate of return More conservative funding standards than current system In the event of a funding shortfall, certain past and future benefits earned under the new model can be adjusted No withdrawal liability No PBGC coverage

Source: GAO analysis based on interviews with industry experts and documentation from Cheiron and NCCMP.

^aNCCMP's proposal highlights support for the Target Benefit model, as well as the Cheiron model, but does not endorse any specific model as exclusive.

Notably, the Cheiron proposal would also use more conservative approaches to investment and funding policy because it uses a relatively lower assumed rate of return and a contingency reserve fund. The Cheiron proposal calls for a more conservative asset allocation and, in addition to sharing some of the investment risk with participants through the flexible benefit design, would also reduce the overall amount of investment risk through the more conservative asset allocation. In addition, the Cheiron model would use a contingency reserve fund that could provide a cushion against unfavorable investment or demographic experience.

The design of a flexible DB plan offers several key benefits, which some stakeholders said are essential to the long-term survival of the multiemployer system. In particular, several stakeholders cited limiting employer liability as a key benefit. Representatives of several employers said it is imperative to limit their liability to enable them to be competitive against competitors. By minimizing risks to employers, a flexible DB

model may strengthen employers' commitment to the plan and reduce incentives for them to leave. Similarly, reducing risk may also help attract new employers to these plans, which may improve a plan's demographics and help it stay well-funded and viable in the long term. Additionally, a group of employer representatives said that a flexible DB plan, such as the one developed by Cheiron, in conjunction with the United Food and Commercial Workers (UFCW) International Union, provides trustees more tools to prudently manage the plan to keep it well-funded and able to pay promised benefits even when faced with adverse events, such as poor investment returns or demographic shifts. Moreover, some stakeholders said that a flexible DB plan reduces risk while also avoiding challenges associated with defined contribution (DC) plans. Specifically, representatives of a construction industry group said a flexible DB plan would still offer pooled and professionally managed investments, along with risk sharing among participants, which can mitigate some of the individual risks faced by participants in DC plans, such as investment risk and longevity risk.⁵⁵ Given the potential long-term benefits of a flexible DB model, some experts said regulatory agencies could do more to help plans adopt a design with these features. For example, one expert said that PBGC could hold a conference on best practices in plan design. In addition, this expert said that PBGC could charge such plans lower premiums commensurate with their lower risk to encourage adoption of these plan design features; however, PBGC lacks the legal authority to do so.⁵⁶

Some plan representatives and experts also noted that a flexible DB model entails tradeoffs. In particular, representatives from an actuarial firm and from an industry group said that while this approach shows promise for addressing prospective challenges, it does not help resolve

⁵⁵ We have previously reported on some of the challenges workers face in accumulating sufficient retirement savings in DC plans. See, for example: GAO, *401(k) Plans: Policy Changes Could Reduce the Long-term Effects of Leakage on Workers' Retirement Savings*, [GAO-09-715](#) (Washington, D.C.: August 2009); *Private Pensions: Alternative Approaches Could Address Retirement Risks Faced by Workers but Pose Trade-offs*, [GAO-09-642](#) (Washington, D.C.: July 2009); and *Retirement Income: Ensuring Income throughout Retirement Requires Difficult Choices*, [GAO-11-400](#) (Washington, D.C.: June 2011).

⁵⁶ For information on challenges facing PBGC's single-employer program and its premium structure, see: GAO, *Pension Benefit Guaranty Corporation: Redesigned Premium Structure Could Better Align Rates with Risk from Plan Sponsors*, [GAO-13-58](#) (Washington, D.C.: November 2012).

problems for plans that already have financial shortfalls. Union and employer representatives said that plans may first need to address existing shortfalls before they could adopt a flexible DB model. Thus, new design options are unlikely to help large plans that are already severely underfunded. Further, in the flexible benefit models described in table 8, investment risk is primarily borne by participants. Representatives from an actuarial firm also said that this model may be relatively expensive when comparing the amount of contributions needed to attain a certain level of accrued benefits. For example, in order to minimize the risk of underfunding, a flexible DB plan may use a relatively low assumed rate of return—and, correspondingly, a more conservative investment strategy—than is more commonly used by multiemployer plans. Over the long term, this may result in a lower level of accrued benefit. However, representatives of one actuarial firm said that higher assumed rates of return used by some multiemployer plans may be too high and could entail a greater risk of the plan becoming underfunded. And, as recent events show, participants already assume a lot of risk in the event a plan becomes severely underfunded. As a result, a flexible benefit model that reduces risk might provide a somewhat lower promised benefit, but one that is more secure.

Encourage Mergers and Alliances

Facilitating more plan mergers or allowing plans to form alliances may also help address financial challenges facing multiemployer plans, according to some plan representatives and industry experts. In a merger, two or more plans are combined into a single plan, including both plan assets and administration. Several stakeholders said that this consolidation helps plans—especially smaller plans—achieve more favorable economies of scale to reduce costs. For example, in a merger, plans can reduce costs by consolidating administrative services, such as annual audits and legal services. In some cases, PBGC provides financial assistance to facilitate a merger by paying a plan that is insolvent or nearing insolvency a portion of the present value of PBGC's net liability for that plan, which serves as an incentive for a well-funded plan to take on the assets and liabilities of a less well-funded plan. PBGC officials said that they are careful to provide financial assistance only in the case of mergers expected to be successful and, thus, avoid paying financial assistance twice to the same plan. While PBGC has helped to facilitate some mergers, several plan representatives and a representative from an actuarial firm said more plans could merge if PBGC provided additional financial assistance. Alternatively, other stakeholders said similar cost-saving benefits from consolidation could be achieved by allowing plans to form alliances. In contrast to a merger, alliances allow plans to combine administrative and investment management services, but retain separate

liabilities and funding accounts. Consequently, in an alliance, each plan would retain its own liabilities and withdrawal liability obligations would not be shared across plans.

Along with cost savings from consolidating administrative services, plan representatives and industry experts said mergers and alliances can offer other important benefits. In particular, a merger or alliance would provide plans a larger asset pool that can also help plans reduce investment management fees. According to a representative from an actuarial firm, combined with administrative cost savings, consolidating investment management services can significantly reduce costs for small plans and may save some from insolvency. For example, some of their small plan clients pay between 30 and 40 percent of contributions towards administrative and investment management expenses while a larger plan would pay closer to 5 percent. However, another expert said cost savings for some plans may be negligible depending on the plan's circumstances. For example, if a plan is already sufficiently large and efficiently managed, cost savings from merging with another plan may be relatively small. In addition, several stakeholders said that by helping plans avoid insolvency, PBGC may also benefit from plan mergers or alliances because the participants of these plans would continue to receive benefits from the plan rather than becoming insolvent and relying on benefit payments from PBGC. Consequently, the cost PBGC incurs to facilitate such arrangements may be more than offset by preventing the plan from becoming insolvent.⁵⁷

While mergers can provide cost-savings and other benefits, plans face barriers to implementing them. For example, representatives from one of the largest plans said that due to the relatively large size of their plan and the amount of their funding shortfall, a merger is not an option for them. Several stakeholders said a merger between a plan that is relatively well-funded and a financially weaker plan poses concerns for plan trustees who have a fiduciary duty to act in the best interests of their plan's participants. One employer representative said that a merger poses risks to the healthier plan and may not be in the best interests of those participants. To address potential risks to the healthier plan, some stakeholders said PBGC should be given greater resources to facilitate

⁵⁷ In fiscal year 2011, PBGC provided \$15.1 million to help plan sponsors close out or merge five plans.

more mergers. In addition, some employer representatives said plans that undertake mergers could be afforded legal protection under a safe harbor to further alleviate concerns over fiduciary responsibility. While alliances may avoid some of these concerns—they would not require plans to harmonize their funding status as each plan retains its own liabilities—such arrangements are not currently permitted and would therefore require a change in law according to NCCMP.

Conclusions

Despite unfavorable economic conditions, most multiemployer plans are currently in adequate financial condition and may remain so for many years. However, a number of plans, including some very large plans, are facing very severe financial difficulties. Many of these plans reported that no realistic combination of contribution increases or allowable benefit reductions—options available under current law to address their financial condition—will enable them to emerge from critical status. As a result, without Congressional action, the plans face the likelihood of eventual insolvency. While the multiemployer system was designed to limit PBGC's exposure by having employers serve as principal guarantors, PBGC remains the guarantor of last resort. However, given their current financial challenges, neither the troubled multiemployer plans nor PBGC currently have the flexibility or financial resources to fully mitigate the effects of anticipated insolvencies. Should a critical mass of plan insolvencies drain the PBGC multiemployer insurance fund, PBGC will not be able to pay either current or future retirees more than a very small fraction of the benefit they were promised. Consequently, a substantial, and in some cases catastrophic, loss of income in old age looms as a real possibility for the hundreds of thousands of workers and retirees depending on these plans.

Congressional action is needed to avoid this scenario, and stakeholders suggested a number of key policy options. For example, various stakeholders suggested that, as a last resort to avert insolvency, Congress could enact legislation permitting plans—subject to certain limitations, protections, and oversight—to reduce accrued benefits of both working participants and retirees. In addition, some stakeholders suggested that Congress could give PBGC the authority and resources to assist the most severely underfunded plans. Stakeholders acknowledged that each of these options poses tradeoffs. Providing PBGC with additional resources, as well as other more direct financial assistance to plans, would create yet another demand on an already strained federal budget. Similarly, reducing accrued benefits for active workers, and especially for those already in retirement, could result in significant

reductions in income for a group that may have limited income alternatives and may be too infirm to return to the labor force. Such an option would also significantly compromise one of the key founding principles of ERISA—that accrued benefits cannot be reduced—essentially rupturing a promise to workers and retirees who have labored for many years, often in dangerous occupations, and in some of the nation’s most vital industries.

The scope and severity of the challenges outlined by stakeholders suggest that a broad, comprehensive response is needed and Congress faces difficult choices in responding to these challenges. However, as the recent tri-agency federal report on multiemployer plans noted, unless timely action is taken to provide additional tools for the multiemployer plan trustees to stabilize the financial conditions of their plans, more costly and intrusive measures may later be necessary. Nevertheless, this situation can also be viewed as an opportunity both to protect the benefits of hundreds of thousands of older Americans and stabilize a pension system that has worked fairly well for decades. Without a comprehensive approach, efforts to improve the long-term financial condition of the multiemployer system may not be effective.

Matters for Congressional Consideration

Given the serious challenges facing PBGC’s multiemployer insurance fund and critically underfunded multiemployer plans, and to prevent the significant adverse effects of PBGC insolvency on workers and retirees, Congress should consider comprehensive and balanced structural reforms to reinforce and stabilize the multiemployer system. In doing so, Congress should consider the relative burdens, as identified by key stakeholders, that each reform option would impose on the competing interests of employers, plans, workers and retirees, PBGC, and taxpayers.

Agency Comments

We provided a draft of this report to the Department of Labor, the Department of the Treasury, and the PBGC for review and comment. We received formal written comments from the PBGC, which generally agreed with our findings and analysis. During the review period, PBGC officials raised the potential role that increased multiemployer insurance program premiums could play in strengthening the program, and hence in helping to ensure that participants in insolvent plans received some financial protection in the long term. In addition, the issue of PBGC premiums was raised repeatedly during a March 5, 2013 hearing held by the House Subcommittee on Health, Employment, Labor and Pensions,

Committee on Education and the Workforce. In light of the level of interest on this issue, we included a brief discussion of the matter of premiums in the final version of our report. PBGC, Labor, and Treasury also provided technical comments which we incorporated as appropriate. PBGC's formal comments are reproduced in appendix II.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies of this report to relevant congressional committees, PBGC, the Secretary of Labor, the Secretary of the Treasury, and other interested parties. In addition, the report will be made available at no charge on the GAO Web site at <http://www.gao.gov>.

If you have any questions about this report, please contact Charles Jeszeck at (202) 512-7215 or jeszeckc@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are found in appendix III.

Sincerely yours,

A handwritten signature in black ink, reading "Charles Jeszeck". The signature is fluid and cursive, with the first name "Charles" and last name "Jeszeck" clearly distinguishable.

Charles A. Jeszeck
Director
Education, Workforce, and Income Security

Appendix I: Objectives, Scope, and Methodology

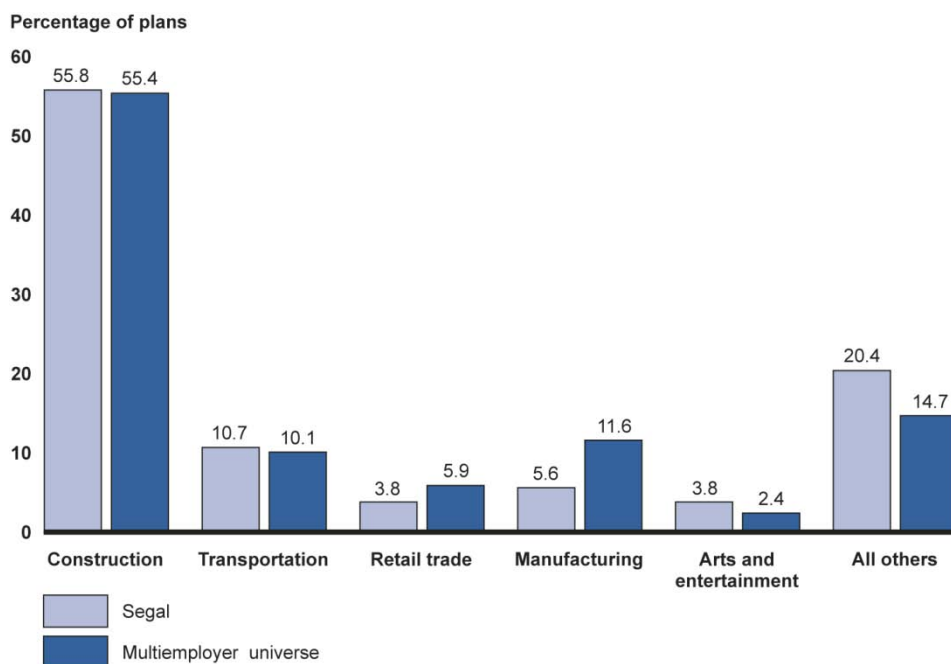
Our objectives were to answer the following research questions:

- 1) What actions have multiemployer plans in the weakest financial condition taken in recent years to improve their long-term financial position?
- 2) To what extent have plans relied on PBGC assistance since 2009, and what is known about the prospective financial condition of the multiemployer plan insurance program?
- 3) What options are available to address PBGC's impending funding crisis and enhance the program's future financial stability?

We sought to answer the first question in two primary steps. First, we obtained data on the results of a survey of critical status plans performed by The Segal Company, a large actuarial firm that has a client base consisting of about 25 percent of all multiemployer plans, representing about 30 percent of all multiemployer plan participants. As figure 13 below illustrates, the industry distribution of Segal's client base substantially parallels that of the broader multiemployer universe. Included as an addendum to Segal's annual survey of plan funded status, the survey instrument requested information about the nature and size of contribution increases and benefit reductions, whether plans expected to emerge from the critical zone within statutory time frames, and the estimated number of years until emergence from the critical zone or, for plans not expecting to emerge, the number of years to plan insolvency. The information pertaining to each of the 107 critical plans in the survey was completed by Segal's professional actuaries responsible for those clients. The survey was initiated in December 2010, and responses were received through February 2011. Through a review of the methodology underlying the survey, and discussions with a Segal representative knowledgeable about the survey, we determined that the results were reliable and useful for our research. Second, we supplemented this data with in-depth interviews with representatives of 13 multiemployer plans—8 were in critical status, 2 in endangered or seriously endangered status, and 3 in neither critical nor endangered status. We selected the plans to ensure that we included a range of plan sizes, industries, geographical areas, and funding status. Plans selected ranged in size from about 2,000 participants to more than 531,000 participants and represented a variety of industries including those featuring some of the largest concentrations of multiemployer plans—construction, manufacturing, and transportation. Before speaking with plan officials, we reviewed available data, including rehabilitation or funding improvement plans, and other relevant

documents. Our in-depth discussions with plan representatives covered various issues, including plans' use of and views regarding funding relief, the nature and size of the contribution increases and benefit reductions, and the probable impact of contribution increases and benefit reductions on employers and plan participants.

Figure 13: Comparison of the Segal Client Base and Multiemployer Universe, by Major Industry



Source: GAO representation of The Segal Company and PBGC data.

To answer the second question, we interviewed officials and analyzed data from PBGC, including recent PBGC annual reports and data books. We also developed several data requests for PBGC that were tailored to this objective, and reviewed information provided by PBGC in response. For example, we obtained data on the amount of PBGC's annual assistance to plans due to plan insolvencies, plan partitions, and assistance granted for other reasons, such as plan mergers or closures. We also obtained and analyzed updated data regarding PBGC's overall financial position and the size of its long-term deficits. Specifically, we obtained data on the liabilities attributable to plans on PBGC's list of plans that are insolvent or considered likely to become insolvent in the next 10 years, as well as those thought likely to become insolvent in the next 10 to 20 years. To better understand the consequences of plan insolvency

on retirees, we interviewed relevant PBGC officials and requested data regarding the impact of insolvency on retirees of various wage levels and tenures. Finally, we discussed the impact of potential PBGC insolvency in our discussions with multiemployer plan officials.

To answer the third objective, we distinguished between options that would address the more immediate funding crisis facing plans headed toward insolvency and options that may enhance the long-run stability of the multiemployer system for plans that may not be headed for insolvency, but, nevertheless, face financial challenges. We assessed the tradeoffs of various options for current workers, retirees, and employers, as well as the federal government. To identify and assess available options, we interviewed a wide range of pension experts—including academics, actuaries, attorneys, plan trustees and administrators, employers and trade associations, unions, advocacy organizations, government officials, and other relevant stakeholders. We also reviewed relevant research and documentation, including a proposal by the National Coordinating Committee for Multiemployer Plans (NCCMP) and research by other industry experts.

As appropriate for each of our objectives, we reviewed existing literature and relevant federal laws and regulations.

We conducted this performance audit from March 2012 through March 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Pension Benefit Guaranty Corporation



March 15, 2013

Charles A. Jeszeck
Director, Education, Workforce, and Income Security Issues
U.S. Government Accountability Office
Washington, DC 20438

Re: Impending Multiemployer Plan Insolvencies and PBGC Challenges

Dear Mr. Jeszeck:

Thank you for your helpful report on multiemployer plans and on the challenges facing PBGC in supporting them. We are grateful for the opportunity to work with GAO and to comment on the draft. The House Committee on Education and the Workforce has undertaken a review of these issues and your report will be an important contribution.

Self-Help Actions Already Taken by Multiemployer Plans

The report documents the steps plans have taken to recover from the market declines of the past decade, as well as other challenges. Importantly, it notes that “despite unfavorable economic conditions, most multiemployer plans are currently in adequate financial condition and may remain so for many years.”

Nonetheless, your report makes clear that a minority of severely underfunded multiemployer pension plans remain distressed and that, absent further changes, they and the PBGC multiemployer insurance fund will become insolvent. GAO’s report adds to the growing expressions of concern about severely distressed plans, as described recently in the ERISA agencies’ Pension Protection Act report to Congress¹ and the report of a leading coalition of stakeholders in the multiemployer community.²

The GAO report provides a helpful discussion of a range of federal policy options, including increased flexibility for multiemployer plan trustees to manage the financial condition of their plans, as well as partition and merger proposals that would involve financial support from PBGC.

How PBGC’s Financial Condition Affects PBGC’s Ability to Protect Multiemployer Plans

Some stakeholders have proposed that PBGC help save plans by providing financial assistance through partitions or to facilitate mergers. The report explains that PBGC’s currently limited authorities and financial resources preclude the agency from helping plans in these ways.

In fact, PBGC’s current resources are insufficient even to maintain its existing multiemployer program over time. The GAO report states that current and projected plan insolvencies will themselves result in the insolvency of PBGC’s multiemployer insurance program by about 2023.

¹ Multiemployer Pension Plans [<http://pbgc.gov/documents/pb-gc-report-multiemployer-pension-plans.pdf>]

² Solutions not Bailouts [http://lib-cdn.s3.amazonaws.com/279/59/b/39/1/Solutions_Not_Bailouts.pdf]

PBGC does not dispute this characterization, which is consistent with several different projection methodologies.

Options to Address PBGC's Impending Funding Crisis

It is for these reasons that we are particularly interested in GAO's views as to the options available to restore PBGC's finances. GAO reports that it has both analyzed PBGC's finances and surveyed a range of experts. Although the draft report was silent on options for addressing PBGC's short- and long-term financial challenges, we understand these will be explained in the final report.

PBGC would benefit from GAO's experience and judgment as to what options might be considered. Your examination of these issues will also undoubtedly be useful to the House Education and Workforce Committee. As you will recall, at the recent subcommittee hearing, Chairman Kline specifically asked what premiums would be necessary to allow PBGC to continue paying benefits.

We welcome GAO's continued exploration of these important issues and look forward to continued collaboration. We hope the result will be to preserve the multiemployer plans on which hundreds of thousands of small businesses and millions of people depend.

Sincerely,


Joshua Gotbaum
Director

Appendix III: GAO Contacts and Acknowledgments

GAO Contact

Charles A. Jeszeck, Director, (202) 512-7215 or jeszeckc@gao.gov

Staff Acknowledgments

In addition to the contact named above, David Lehrer (Assistant Director), Michael Hartnett, Sharon Hermes, and Kun-Fang Lee made key contributions to this report.

In addition, support was provided by Frank Todisco, GAO Chief Actuary, James Bennett, David Chrisinger, Julianne Cutts, Jessica Gray, Theresa Lo, Ashley McCall, Sheila McCoy, and Walter Vance.

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